

MONTANA LEGISLATIVE HISTORY

Chapter 556 ²⁰⁰³ ~~2002~~

Bill HB 197 S _____ Original bill & history ☒ C

H. Committee on Judiciary

Hearing Date(s) 1/16/2003 ☒ C

_____ C

_____ C

_____ C

Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) 3/07/2003 ☒ C

exhibits C

3-24 C

_____ C

Did this bill originate in an interim committee? _____ Yes ☒ No

Committee _____

Report _____

⇒ 61.11.204

Free Conference Committee

H 4/15/2003 ✓

S 4/15/2003 ✓ Exhibit

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

HOUSE BILLS AND RESOLUTIONS

291

	TRANSMITTED TO SENATE		
2/04	REFERRED TO JUDICIARY		
2/05	HEARING		
2/07	REVISED FISCAL NOTE REQUESTED		
2/07	REVISED FISCAL NOTE RECEIVED		
2/08	REVISED FISCAL NOTE PRINTED		
4/03	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	9	0
4/03	COMMITTEE REPORT—BILL CONCURRED		
4/04	2ND READING CONCURRED ON VOICE VOTE	49	0
4/05	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
4/07	SENT TO ENROLLING		
4/08	RETURNED FROM ENROLLING		
4/08	SIGNED BY SPEAKER		
4/08	SIGNED BY PRESIDENT		
4/09	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
4/14	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 300		
	EFFECTIVE DATE: 4/14/2003 - ALL SECTIONS		

HB 196 INTRODUCED BY FISHER

LC0414 DRAFTER: CAMPBELL

COMBINE BOARD OF BARBERS AND BOARD OF COSMETOLOGY

BY REQUEST OF DEPARTMENT OF LABOR AND INDUSTRY

12/26	INTRODUCED		
1/02	FISCAL NOTE REQUESTED		
1/03	REFERRED TO BUSINESS AND LABOR		
1/08	FISCAL NOTE RECEIVED		
1/09	FISCAL NOTE PRINTED		
1/20	HEARING		
1/21	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	18	0
1/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/25	2ND READING PASSED	96	1
1/27	3RD READING PASSED	98	1
	TRANSMITTED TO SENATE		
1/29	REFERRED TO BUSINESS AND LABOR		
3/17	HEARING		
3/22	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	9	1
3/22	COMMITTEE REPORT—BILL CONCURRED		
3/27	2ND READING CONCURRED ON VOICE VOTE	48	1
3/28	3RD READING CONCURRED	48	2
	RETURNED TO HOUSE		
3/31	SENT TO ENROLLING		
4/01	SIGNED BY SPEAKER		
4/01	RETURNED FROM ENROLLING		
4/01	SIGNED BY PRESIDENT		
4/02	TRANSMITTED TO GOVERNOR		
4/08	SIGNED BY GOVERNOR		
4/08	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 243		
	EFFECTIVE DATE: 10/01/2003 - ALL SECTIONS		

HB 197 INTRODUCED BY BECKER

LC0153 DRAFTER: LANE

REVISE DRIVER LICENSE LAWS

BY REQUEST OF DEPARTMENT OF JUSTICE

12/26	INTRODUCED		
1/03	REFERRED TO JUDICIARY		
1/16	HEARING		
1/21	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	18	0
1/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/29	2ND READING PASSED	94	2
1/30	3RD READING PASSED	99	0
	TRANSMITTED TO SENATE		
1/31	REFERRED TO JUDICIARY		
3/07	HEARING		
3/24	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED AS AMENDED	6	0
3/24	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		

3/27	2ND READING CONCURRED ON VOICE VOTE	41	0
3/28	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/01	REVISED FISCAL NOTE REQUESTED		
4/04	REVISED FISCAL NOTE RECEIVED		
4/04	REVISED FISCAL NOTE PRINTED		
4/08	2ND READING SENATE AMENDMENTS NOT CONCURRED	100	0
4/08	FREE CONFERENCE COMMITTEE APPOINTED		
4/09	FREE CONFERENCE COMMITTEE APPOINTED		
4/15	HEARING		
4/15	FREE CONFERENCE COMMITTEE REPORT RECEIVED		
4/15	FREE CONFERENCE COMMITTEE REPORT RECEIVED		
4/15	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED ON VOICE VOTE	48	0
4/16	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	50	0
4/23	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	99	1
4/24	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	90	10
4/24	SENT TO ENROLLING		
4/25	RETURNED FROM ENROLLING		
4/26	SIGNED BY PRESIDENT		
4/26	SIGNED BY SPEAKER		
4/26	TRANSMITTED TO GOVERNOR		
5/05	SIGNED BY GOVERNOR		
5/05	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 556		
	EFFECTIVE DATE: 5/05/2003 - ALL SECTIONS		

HB 198 INTRODUCED BY LAMBERT

LC1070 DRAFTER: PETESCH

CLARIFY REQUIREMENTS FOR BALLOT LANGUAGE

12/26	INTRODUCED		
1/03	REFERRED TO STATE ADMINISTRATION		
1/15	HEARING		
1/31	COMMITTEE EXECUTIVE ACTION—BILL PASSED	19	0
1/31	COMMITTEE REPORT—BILL PASSED		
2/07	2ND READING PASSED	98	0
2/08	3RD READING PASSED	92	0
	TRANSMITTED TO SENATE		
2/22	REFERRED TO STATE ADMINISTRATION		
3/07	HEARING		
3/10	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	4	0
3/10	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED ON VOICE VOTE	50	0
3/12	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
3/12	SENT TO ENROLLING		
3/13	RETURNED FROM ENROLLING		
3/14	SIGNED BY SPEAKER		
3/14	SIGNED BY PRESIDENT		
3/17	TRANSMITTED TO GOVERNOR		
3/26	SIGNED BY GOVERNOR		
3/26	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 132		
	EFFECTIVE DATE: 10/01/2003 - ALL SECTIONS		

HB 199 INTRODUCED BY HARRIS

LC0164 DRAFTER: LANE

ALLOW POSTING DRIVER'S LICENSE AS BOND

BY REQUEST OF DEPARTMENT OF JUSTICE

12/26	INTRODUCED		
1/03	REFERRED TO JUDICIARY		
1/16	HEARING		
1/23	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	18	0
1/24	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/30	2ND READING PASSED	97	2
1/31	3RD READING PASSED	97	2
	TRANSMITTED TO SENATE		
2/03	REFERRED TO JUDICIARY		
3/11	HEARING		
3/19	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED AS AMENDED	8	0

HOUSE BILL NO. 197

INTRODUCED BY A. BECKER

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO REVOCATIONS, SUSPENSIONS, AND RECORDKEEPING OF DRIVER'S LICENSES; REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF JUSTICE ESTABLISH BY ADMINISTRATIVE RULE A DRIVER REHABILITATION AND IMPROVEMENT PROGRAM THAT INCLUDES A REQUIREMENT TO CONTRACT WITH PRIVATE ENTITIES FOR THE OPERATION OF PROGRAM COURSES; CLARIFYING THE REQUIREMENTS FOR OBTAINING AND USING A DRIVING RECORD FROM ANOTHER JURISDICTION FOR A PERSON APPLYING FOR A MONTANA DRIVER'S LICENSE; REVISING REQUIREMENTS FOR THE SUSPENSION AND REVOCATION OF A DRIVER'S LICENSE FOR CONVICTIONS OF CERTAIN OFFENSES AND BREATH TESTING REFUSALS; REVISING AUTHORITY TO IMPOSE A DISCRETIONARY LICENSE SUSPENSION; REVISING THE REQUIREMENT FOR SUSPENDING A LICENSE FOR A CONVICTION OF DRIVING WHILE A LICENSE IS SUSPENDED OR REVOKED; REMOVING THE REQUIREMENT THAT THE DEPARTMENT SUSPEND THE DRIVER'S LICENSE OF A PERSON WHO FAILS TO COMPLY WITH CERTAIN DRIVER REHABILITATION AND IMPROVEMENT COURSE REQUIREMENTS; REMOVING THE DEFINITION OF "DRIVER IN NEED OF REHABILITATION AND IMPROVEMENT"; AMENDING SECTIONS 61-2-302, 61-5-107, 61-5-205, 61-5-206, 61-5-208, 61-5-212, 61-7-103, 61-8-402, 61-8-409, 61-8-734, 61-11-203, 61-11-204, AND 61-13-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-2-302, MCA, is amended to read:

"61-2-302. Establishment of driver rehabilitation and improvement program -- ~~department to contract with private entities -- participation by offending drivers.~~ (1) ~~(a) The department shall~~ may establish by administrative rules a driver rehabilitation and improvement program or programs, ~~that~~ The programs may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques and must include the requirements for obtaining a restricted probationary

1 driver's license.

2 (b) ~~The rules must:~~

3 ~~—— (i) provide for the local program courses to be operated by private entities;~~

4 ~~—— (ii) develop a procedure for certifying private entities as driver rehabilitation and improvement course~~
5 ~~providers;~~

6 ~~—— (iii) establish the criteria that private entities must meet in order to be certified by the department; and~~

7 ~~—— (iv) provide for an alternative driver rehabilitation and improvement procedure for drivers who live in~~
8 ~~areas where a course is not offered.~~

9 (2) ~~Official participation in the driver rehabilitation and improvement program is limited to those persons~~
10 ~~whose license to operate a motor vehicle in the state of Montana~~ Except when otherwise provided or restricted
11 by statute, a person whose driver's license is suspended or revoked by the department may participate in any
12 driver rehabilitation and improvement program established under this section if the person's license is:

13 (a) ~~(i) subject to suspension or revocation~~ suspended as a result of a violation of the traffic laws of this
14 state, unless the suspension was imposed under the authority provided in Title 61, chapter 8, part 8; or;

15 (ii) unless otherwise provided by the sentencing court, is suspended under 45-5-624(2)(b); or

16 (b) ~~revoked and they have~~ the person has:

17 (i) ~~completed at least 3 months of a 1-year revocation or, if revocation is for a second or subsequent~~
18 ~~violation of 61-8-401 or 61-8-406, have provided the department with proof of compliance with the ignition~~
19 ~~interlock device restriction imposed under 61-5-208; or~~

20 (ii) ~~completed 1 year of a 3-year revocation; and~~

21 (iii) ~~met the requirements for reobtaining a Montana driver's license; or~~

22 ~~—— (c) subject to suspension as provided in 61-11-204(3).~~

23 (3) ~~Notwithstanding any provision of this part inconsistent with any other law of the state of Montana,~~
24 ~~the enforcement of any suspension or revocation order that constitutes the basis for any person's participation~~
25 ~~in the driver rehabilitation and improvement program provided for in this section may be stayed if that person~~
26 ~~complies with the requirements established for the driver rehabilitation and improvement program and meets~~
27 ~~the eligibility requirements of subsection (2).~~

28 (4) ~~In the event that~~ If a person's driver's license has been surrendered before the person's selection
29 for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt
30 of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation ~~order~~ action must be terminated and the ~~order of suspension or revocation enforced~~ action must be reinstated if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

~~(7) The department and the entity with which the department contracts under subsection (1)(b) shall establish separate fee schedules that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be collected separately by the department and by the entity with which the department contracts under subsection (1)(b).~~

~~(8) The fees collected by the department under subsection (7) must be used to help defray costs incurred by the department in administering the program and in contracting with private entities as provided in subsection (1). The department may not use the fees collected under subsection (7) for any other purpose.~~

(7) The department may establish a schedule of fees that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be used to help defray costs of maintaining the program.

~~(9)(8)~~ A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

~~(10)(9)~~ (a) Except as provided in ~~(10)(b)~~ subsection (9)(b), the department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(b) The department may not issue a restricted probationary license that would permit an individual to drive a commercial motor vehicle during a period in which:

(i) the individual is disqualified from operating a commercial motor vehicle under state or federal law; or

(ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

~~(11)(10)~~ It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to the person under this section."

Section 2. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each

application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must include the full legal name, date of birth, sex, residence address of the applicant [and the applicant's social security number], must include a brief description of the applicant, and must include a statement that allows the department to determine if:

(a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country;

(b) any commercial driver's license has ever been suspended or revoked;

(c) an application has ever been denied and, if so, the date of and reason for suspension, revocation, or denial;

(d) the applicant has a physical or mental disability, limitation, or condition that impairs or may impair the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(e) the applicant relies upon, or intends to rely upon, any adaptive equipment or operational restrictions to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, including the nature of the equipment or restrictions.

[(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) (a) When an application is received from an applicant who is not ineligible for licensure under 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from the previous licensing jurisdiction. The driving record may be transmitted manually or by electronic medium. ~~When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.~~

(b) When received, the driving records must be appended to the driver's record created and maintained in this state. The department may rely on information contained in driving records received under this section to determine the appropriate action to be taken against the applicant upon subsequent receipt of a report of a conviction or other conduct requiring suspension or revocation of a driver's license under state law. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

Section 3. Section 61-5-205, MCA, is amended to read:

"61-5-205. Mandatory revocation or suspension of license upon proper authority certain convictions -- duration of action -- exceptions. (1) The department upon proper authority shall revoke the an individual's driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for any of the following offenses, when the conviction or forfeiture has become final or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) negligent homicide resulting from the operation of a motor vehicle;

~~(b) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more;~~

~~(c)~~(b) any felony in the commission of which a motor vehicle is used;

~~(d)~~(c) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

~~(e)~~(d) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles; or

~~(f) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; or~~

~~(g)~~(e) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) The department upon proper authority shall suspend the driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for The department shall suspend an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol

1 or drugs or operating a motor vehicle with a blood alcohol concentration of 0.10 or more;

2 (b) three reckless driving offenses committed within a period of 12 months; or

3 (c) a theft offense under 45-6-301 when the conviction or forfeiture has become final if the theft
4 consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense. The
5 suspension must be for 30 days for a first offense, 6 months for a second offense, and 1 year for a third or
6 subsequent offense.

7 (3) A revocation under subsection (1) must be for a period of 1 year.

8 (4) (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection (2) must be
9 for a period of 1 year.

10 (b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208(2)(b).

11 (c) A suspension under subsection (2)(c) must be for one of the following periods:

12 (i) 30 days for a first offense;

13 (ii) 6 months for a second offense; and

14 (iii) 1 year for a third or subsequent offense."

15
16 **Section 4.** Section 61-5-206, MCA, is amended to read:

17 **"61-5-206. Authority of department to suspend license or driving privilege or issue probationary**
18 **license.** (1) The department may suspend the driver's license or driving privilege of a driver without preliminary
19 hearing upon a showing by its records or other sufficient evidence that the licensee:

20 ~~(a) has been involved as a driver in any accident resulting in the death or personal injury of another or~~
21 ~~serious property damage;~~

22 ~~—— (b) has been convicted with such frequency of serious offenses against traffic regulations governing~~
23 ~~the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other~~
24 ~~persons on the highways;~~

25 ~~—— (c) is a habitually reckless or negligent driver of a motor vehicle;~~

26 ~~—— (d) is incompetent to drive a motor vehicle;~~

27 ~~(e)(a) has committed or permitted an unlawful or fraudulent use of the license as specified in 61-5-302;~~

28 ~~(f) has committed an offense in another state that if committed in this state would be grounds for~~
29 ~~suspension or revocation;~~

30 ~~(g)(b) has falsified the licensee's date of birth on the application for a driver's license;~~

(h)(c) is under 21 years of age and has altered the licensee's or another's driver's license or identification card to obtain alcohol; or

(h)(d) has authorized another to use the licensee's driver's license or identification card to obtain alcohol; or

~~(j) has been declared a driver in need of rehabilitation and improvement, as defined in 61-11-203, and has failed to enroll in or successfully complete, within 90 days of notice, a driver rehabilitation and improvement course or other appropriate course determined by the department as provided in 61-11-204.~~

(2) However, the department may, in lieu of suspending the license or driving privilege, issue a probationary license to a driver, without preliminary hearing, upon a showing by its records or other sufficient evidence that the licensee's driving record would authorize suspension as provided in subsection (1). Upon issuance of a probationary license, the licensee is subject to the restrictions set forth in the probationary license. The licensee's driving privilege may be suspended upon conviction or forfeiture of bail not vacated of any traffic violation during the period of probation. The licensee shall surrender to the department all driver's licenses that have been issued to the licensee before the probationary license may be issued. The licensee's refusal or neglect to surrender the licenses upon demand is grounds for suspending all licenses. Probationary licenses may be issued for a period not to exceed 12 months.

(3) Upon suspending the license of any person or upon placing the person on probation, as authorized in this section, the department shall immediately notify the licensee in writing and upon the licensee's request shall afford the licensee an opportunity for a hearing as early as practical, within 20 days after receipt of the request, in the county in which the licensee resides unless the department and the licensee agree that the hearing may be held in some other county. At the hearing, the department through its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. At the hearing, the department shall either rescind its order of suspension or probation or, for good cause, may affirm, reduce, or extend the period of probation or suspension of the license."

Section 5. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation -- probationary license -- ignition interlock device required on second or subsequent offense. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways ~~for a period of more than 1 year, except as otherwise~~

1 permitted by law.

2 (2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on
3 the public highways has been suspended or revoked may not have the license, endorsement, or privilege
4 renewed or restored until the revocation or suspension period has been completed.

5 (b) When a person is convicted or forfeits bail or collateral not vacated for the offense of operating or
6 being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a
7 combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol
8 concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or
9 collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months.
10 Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense
11 within 5 years of the first offense, the department shall ~~revoke~~ suspend the license or driving privilege of the
12 person for a period of 1 year and, upon issuance of any restricted probationary license during the period of
13 ~~revocation~~ suspension, restrict the person to driving only a motor vehicle equipped with a functioning ignition
14 interlock device. If the 1-year period passes and the person has not completed a chemical dependency
15 education course, treatment, or both, as ordered by the sentencing court, the license ~~revocation~~ suspension
16 remains in effect until the course, treatment, or both, are completed.

17 (c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third,
18 or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior
19 conviction and the date of the offense that resulted in the most recent conviction.

20 (3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof
21 of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license
22 suspension of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's
23 driver's license. The stay must remain in effect until the period of suspension has expired and any required
24 chemical dependency education course, treatment, or both, have been completed.

25 (b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the
26 person has violated the court-imposed ignition interlock restriction by, including but not limited to operating a
27 motor vehicle not equipped with the device, tampering with the device, or removing the device before the period
28 of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder
29 of the time period. The department may not issue a probationary driver's license to a person whose license
30 suspension has been reinstated because of violation of an ignition interlock restriction.

(4) ~~The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).~~

(5)(4) (a) The Except as provided in subsection (4)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(6)(5) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

Section 6. Section 61-5-212, MCA, is amended to read:

"61-5-212. Driving while license suspended or revoked -- penalty -- seizure of vehicle or rendering vehicle inoperable. (1) A person who drives a motor vehicle or commercial motor vehicle on any public highway of this state at a time when the person's privilege to do so is suspended or revoked in this state or any other state is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than \$500.

(2) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the person's driver's license was suspended or revoked shall extend the period of suspension or revocation for an additional ~~like~~ 1-year period.

(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended or revoked for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.

(6) A court may not suspend or defer imposition of penalties provided by this section."

Section 7. Section 61-7-103, MCA, is amended to read:

"61-7-103. Accidents involving death or personal injuries. (1) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop ~~such the~~ vehicle at the scene of ~~such the~~ accident or as close ~~thereto~~ to the accident as possible; but shall then ~~forthwith~~ return to and in every event ~~shall~~ remain at the scene of the accident until ~~he~~ the driver has fulfilled the requirements of 61-7-105. ~~Every such stop shall~~ Each stop at the scene of the accident must be made without obstructing traffic more than is necessary.

(2) ~~Any person~~ A driver failing to stop or to comply with ~~said the~~ requirements ~~under such circumstances~~ of subsection (1) shall upon conviction be punished by imprisonment for not less than 30 days or more than ~~1~~ year, or by a fine of not less than \$100 or more than \$5,000, or by both ~~such~~ fine and imprisonment.

(3) The department shall revoke the license or permit to drive of any resident and any nonresident operating privilege of ~~any a person so~~ convicted of violating this section for the period prescribed in ~~61-5-205~~ 61-5-205."

Section 8. Section 61-8-402, MCA, is amended to read:

"61-8-402. Blood or breath tests for alcohol, drugs, or both. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage, bodily injury, or death.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (6).

(5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension ~~or revocation~~ and the right to a hearing provided in 61-8-403.

(6) The following suspension ~~and revocation~~ periods are applicable upon refusal to submit to one or more tests:

- (a) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;
- (b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a ~~revocation~~ suspension of 1 year with no provision for a restricted probationary license.

(7) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(8) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

(9) A suspension under this section is subject to review as provided in this part.

(10) This section does not apply to blood and breath tests, samples, and analyses used for purposes

1 of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an
2 offense not in this part."

3

4 **Section 9.** Section 61-8-409, MCA, is amended to read:

5 **"61-8-409. Preliminary alcohol screening test.** (1) A person who operates or is in actual physical
6 control of a vehicle upon ways of this state open to the public is considered to have given consent to a
7 preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol
8 concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving
9 or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of
10 alcohol or in violation of 61-8-410.

11 (2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting
12 to a preliminary alcohol screening test pursuant to this section.

13 (3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit
14 to the preliminary alcohol screening test will result in the suspension ~~or revocation~~ for up to 1 year of that
15 person's driver's license.

16 (4) If the person refuses to submit to a test under this section, a test will not be given. However, the
17 refusal is sufficient cause to suspend ~~or revoke~~ the person's driver's license as provided in 61-8-402.

18 (5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited
19 to determining whether a peace officer had a particularized suspicion that the person was driving or in actual
20 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or
21 in violation of 61-8-410 and whether the person refused to submit to the test.

22 (6) The provisions of 61-8-402 (3) through (8) that do not conflict with this section are applicable to
23 refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same
24 incident, the department may not consider each a separate refusal for purposes of suspension ~~or revocation~~
25 under 61-8-402.

26 (7) A test may not be conducted or requested under this section unless both the peace officer and the
27 instrument used to conduct the preliminary alcohol screening test have been certified by the department
28 pursuant to rules adopted under the authority of 61-8-405(5)."

29

30 **Section 10.** Section 61-8-734, MCA, is amended to read:

"61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of sentence not allowed. (1) (a) For the purpose of determining the number of convictions under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, "conviction" means a final conviction, as defined in 45-2-101, in this state; conviction for a violation of a similar statute or regulation in another state, or a federally recognized Indian reservation; or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state, another state, or a federally recognized Indian reservation, which forfeiture has not been vacated.

(b) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes.

(c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or 61-8-406.

(2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under 61-8-714 or 61-8-722 be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(3) Subject to the limitations set forth in 61-8-714 and 61-8-722 concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under either section be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under 61-8-714, 61-8-722, or 61-8-731.

(5) The provisions of 61-2-107, 61-2-302, 61-5-205(1)(b)(2), and 61-5-208(2), relating to suspension and revocation of driver's licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406."

Section 11. Section 61-11-203, MCA, is amended to read:

1 **"61-11-203. Definitions.** As used in this part, the following definitions apply:

2 (1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty or nolo
3 contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged
4 with having committed any offense relating to the use or operation of a motor vehicle that is prohibited by law,
5 ordinance, or administrative order.

6 ~~(2) "Driver in need of rehabilitation and improvement" means a person who within a 2-year period~~
7 ~~accumulates 18 or more conviction points according to the schedule specified in subsection (3).~~

8 ~~(3)~~(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more
9 conviction points according to the schedule specified in this subsection:

10 (a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

11 (b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or
12 negligent vehicular assault, 12 points;

13 (c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the
14 commission of which a motor vehicle is used, 12 points;

15 (d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation
16 of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

17 (e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

18 (f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any
19 person to stop at the scene of the accident and give the required information and assistance, as defined in
20 61-7-105, 8 points;

21 (g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the
22 scene of the accident and give the required information or failure to otherwise report an accident in violation of
23 the law, 4 points;

24 (h) reckless driving, 5 points;

25 (i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

26 (j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5
27 points;

28 (k) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not apply to
29 operating a motor vehicle within a period of 180 days from the date the license expired);

30 (l) speeding, except as provided in 61-8-725(2), 3 points;

(m) all other moving violations, 2 points.

(4)(3) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.

(5)(4) "License" means any type of license or permit to operate a motor vehicle.

(6)(5) "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway, as the term is defined in 61-1-201.

(7)(6) A traffic regulation includes any provision governing motor vehicle operation, equipment, safety, size, weight, and load restrictions or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking."

Section 12. Section 61-11-204, MCA, is amended to read:

"61-11-204. Department's duties. (1) If the records maintained by the department show that a person's driving record brings the person within the definition of a habitual traffic offender, the department shall:

- (a) declare the person a habitual traffic offender;
- (b) revoke the person's driver's license or driving privileges as provided in 61-11-211; and
- (c) notify the person in writing of the declaration and revocation.

(2) The notice must be sent by first-class mail to the most current address on record with the department. The notice must include a certified reproduction of the person's driving record as contained in the computer storage device used by the department for recordkeeping. The notice must inform the person of the right under 61-11-210 to appeal the declaration and revocation. Service of the notice is complete upon mailing.

~~(3) If the records maintained by the department show that a person's driving record brings the person within the definition of a driver in need of rehabilitation and improvement, the department shall:~~

- ~~— (a) declare the person a driver in need of rehabilitation and improvement;~~
- ~~— (b) notify the person that unless the person enrolls in and successfully completes, within 90 days of notification, a certified driver rehabilitation and improvement course, as provided in 61-2-302, the person's driver's license will be suspended for a period not to exceed 6 months or until the person has successfully completed the course, whichever occurs first;~~
- ~~— (c) provide the person with a list of certified driver rehabilitation and improvement courses and~~

1 information about how the person may comply with the provisions of this subsection (3) if a driver rehabilitation
2 and improvement program does not exist near the person's residence; and

3 ~~—— (d) send the notice as provided in subsection (2);~~

4 ~~—— (4) If the person fails to enroll in a certified driver rehabilitation and improvement program or fails to~~
5 ~~successfully complete the program or an appropriate substitute within 90 days, the department may suspend~~
6 ~~the person's driver's license as provided in 61-5-206 for a period not to exceed 6 months or until the person has~~
7 ~~successfully completed the course, whichever occurs first."~~

8
9 **Section 13.** Section 61-13-104, MCA, is amended to read:

10 **"61-13-104. Penalty -- no record permitted.** (1) A driver who violates 61-13-103 shall be fined \$20,
11 but the violation is not a misdemeanor pursuant to 45-2-101, 46-18-236, 61-8-104, or 61-8-711. A violation of
12 61-13-103 may not be counted as a moving violation for purposes of suspending a driver's license under
13 61-11-203(3)(m)(2)(m). Bond for this offense is \$20, and a jail sentence may not be imposed.

14 (2) A violation of 61-13-103 may not be recorded or charged against the driver's record of a person
15 violating 61-13-103.

16 (3) An insurance company may not hold a violation of 61-13-103 against the insured or increase the
17 insured's premiums due to a violation of 61-13-103."

18
19 **NEW SECTION. Section 14. Effective date.** [This act] is effective on passage and approval.

20 - END -

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 16, 2003 at
8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 195, 1/16/2003; HB 197,
1/16/2003; HB 199, 1/16/2003; HB
200, 1/16/2003
Executive Action: HB 200; HB 57; HB 141; HB 15; HB 77

HEARING ON HB 197

Sponsor: REP. ARLENE BECKER, HD 18, Billings

Opening Statement by Sponsor:

REP. BECKER opened on HB 197. She stated this bill would revise laws relating to revocations, suspensions, and record-keeping of driver's licenses. She stated this bill would remove the requirement that the Department of Justice (DOJ) establish by administrative rule, a driver rehabilitation and improvement program. She stated that this bill would change the required language to permissive language; clarify record-keeping; and changes on the mandate of revocation to suspension.

Brenda Nordlund, Assistant Attorney General, stated this bill is to streamline and improve the Department of Motor Vehicles (DMV). She emphasized the reality is the mandated program stemming from SB 334 is not working as there is not funding to implement it.

Ms. Nordlund stated the DMV is responsible for maintaining records, suspending or revoking driver's licenses, and overseeing the issuance of probationary licenses. She described the burden on the DMV when revocations occur and stressed that the DMV can suspend instead. She laid out how a suspension would be technically and fiscally superior and realistic for Montana. She described the difference between a license revocation and a license suspension relates to what is required of the driver after the period of withdrawal ends and the driver wants the privilege to drive restored. On a suspension, when the period ends, the DMV simply changes the status on the computer and mails the license back to the person. She stated that a revocation terminates a driving privilege and the person must start the license process over. She stated that this process is daunting for DMV and involves great time and expense of taxpayer dollars.

Ms. Nordlund stressed Montana cannot have mandates on the books which are not enforceable. She related it to trying to run driver's education program without any funding to do it. She explained that at present the DMV is in a tenuous position and the law needs to be changed. She spoke of changing section two of the bill as it is breeding litigation. She stated Montana denied an individual's right to a driver's license from another state. She stated the Montana Supreme Court determined that Montana should apply its own standards to the conduct committed by someone from out of state. She spoke on the logistics of revocation as opposed to suspension and how the latter would accomplish the same goal but with much less time and expense to the DMV.

EXHIBIT(juh09a09)

EXHIBIT(juh09a10)

{Tape: 2; Side: B; Approx. Time Counter: 1 - 343}

Shawn Driscoll, Chief Montana Highway Patrol, supported HB 197. He stated they utilize driver's records and it assists them in a stop to gather the history of a person.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. PARKER asked about out-of-state driving records and whether they are discoverable. **Ms. Nordlund** stated it would be but it only pertains to licenses that are suspended or revoked.

REP. HARRIS asked whether DOJ would be satisfied if this bill passed. **Ms. Nordlund** stated this bill would satisfy the DMV's business practices. She stated this bill should be coordinated with other bills on this matter. **REP. HARRIS** asked whether any progress is being made. **Ms. Nordlund** stated this bill sends a message along with some public shaming. **REP. RICE** asked Ms. Nordlund about section two of the bill. **Ms. Nordlund** stated that section does not create a national data base. She stated it is from jurisdiction to jurisdiction and only points a person to where they might find information.

{Tape: 2; Side: B; Approx. Time Counter: 340 - 494}

REP. NOENNIG asked about an out-of-state driving record. **Ms. Nordlund** responded that if she is from North Dakota and has two prior convictions from North Dakota, the DMV would rely on it because of subsequent conduct. **REP. NOENNIG** stated this bill would allow Montana to have the records and not have to reinvent them. **Ms. Nordlund** stated that if DMV has extended history on a person, it can make choices based on Montana law.

{Tape: 3; Side: A; Approx. Time Counter: 1 - 103}

REP. NOENNIG asked why Montana should give a break to a DUI offender by suspending rather than revoking. **Ms. Nordlund** stated there is no evidence to show that revoking makes a person a better driver. A suspended license takes away their lawful

privilege to drive. The only difference between revocation and suspension from the perpetrator's view is at the tail end.

{Tape: 3; Side: A; Approx. Time Counter: 104 - 142}

REP. PARKER asserted that driving while suspended is the same penalty as driving while revoked and that they both require six months in jail or a \$500 fine. He stated this bill would give the prosecution opportunities to hold people accountable for driving on a suspended license.

{Tape: 3; Side: A; Approx. Time Counter: 143 - 152}

Closing by Sponsor:

REP. BECKER closed on HB 197. She stated, regarding the DOJ mandated program, that it is a good program but not in existence at present due to lack of funding. She urged the committee to consider suspension over revocation as a good public policy decision. She stated that perhaps the program could be reinstated down the road by the legislature if money becomes available.

{Tape: 3; Side: A; Approx. Time Counter: 153 - 169}

HEARING ON HB 200

Sponsor: **REP. CHRISTOPHER HARRIS, HD 30, Bozeman**

Opening Statement by Sponsor:

REP. HARRIS opened on HB 200 which creates a biological agents registry in the Department of Justice (DOJ) authorizing civil penalties for a violation of the registry. He asked this bill be tabled as the federal government will be enacting adequate legislation.

CHAIRMAN SHOCKLEY stated that in light of REP. HARRIS'S request to table HB 200, the Hearing on HB 200 was suspended.

{Tape: 3; Side: A; Approx. Time Counter: 170 - 192}

EXECUTIVE ACTION ON HB 200

Motion/Vote: **REP. GALLUS** moved that HB 200 DO PASS. Motion failed 0-18 by voice vote.

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE

1/16/03

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. JEFF LASZLOFFY, VICE CHAIR MAJORITY	✓		
REP. PAUL CLARK, VICE CHAIR MINORITY	✓		
REP. SCOTT SALES	✓		
REP. MIKE LANGE	✓		
REP. DIANE RICE	✓		
REP. CHRISTOPHER HARRIS	✓		
REP. TOM FACEY	✓		
REP. STEVE GALLUS	✓		
REP. JOHN PARKER	✓		
REP. HOLLY RASER	✓		
REP. MARK NOENNIG	✓		
REP. BRUCE MALCOLM	✓		
REP. BILL THOMAS	✓		
REP. RON STOKER	✓		
REP. GAIL GUTSCHE	✓		
REP. GEORGE EVERETT	✓		
REP. BRAD NEWMAN	✓		
REP. JIM SHOCKLEY, CHAIRMAN	✓		

Montana House of Representatives Visitors Register

JUDICIARY COMMITTEE

Date 1/16/03

Bill No. HB 197 Sponsor(s) A. Bralces

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 21, 2003 at
8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 222, 1/3/2003; HB 234, 1/3/2003;
HB 214, 1/3/2003;
Executive Action: HB 171; HB 197; HB 210; HB 212; HB
209

Vote: Motion HB 171 BE AMENDED carried 16-1 with PARKER voting no.

Motion/Vote: REP. GUTSCHE moved to RECONSIDER AMENDMENTS TO HB 171. Motion failed 7-10 with REPS. FACEY, GUTSCHE, LANGE, NEWMAN, PARKER, RASER, and SHOCKLEY voting aye.

Motion/Vote: REP. LASZLOFFY moved that HB 171 DO PASS AS AMENDED. Motion carried unanimously roll call vote.

EXECUTIVE ACTION ON HB 197

Motion: REP. LASZLOFFY moved that HB 197 DO PASS.

Discussion:

John MacMaster explained the amendments on page 5, line 26. He stated the Department of Justice added new language. He also emphasized a conflict between this bill and the .08 BAC bill before the Senate. He stated these bills need to be coordinated.

Motion/Vote: REP. NOENNIG moved that HB 197 BE AMENDED. Motion carried unanimously by voice vote.

Motion/Vote: REP. NOENNIG moved that HB 197 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 210

Motion: REP. SHOCKLEY moved that HB 210 DO PASS.

Motion/Vote: REP. GUTSCHE moved that HB 210 BE AMENDED. Motion carried unanimously by voice vote.

Motion/Vote: REP. LASZLOFFY moved that HB 210 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 212

Motion: REP. SHOCKLEY moved that HB 212 DO PASS.

Discussion:

REP. SHOCKLEY stated this bill would attempt to make the statutes conform to case law.

Vote: Motion that HB 212 DO PASS carried unanimously.

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 1/21/03

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. JEFF LASZLOFFY, VICE CHAIR MAJORITY	✓		
REP. PAUL CLARK, VICE CHAIR MINORITY	✓		
REP. SCOTT SALES	✓		
REP. MIKE LANGE	✓		
REP. DIANE RICE	✓		
REP. CHRISTOPHER HARRIS			
REP. TOM FACEY	✓		
REP. STEVE GALLUS	✓		
REP. JOHN PARKER	✓		
REP. HOLLY RASER	✓		
REP. MARK NOENNIG	✓		
REP. BRUCE MALCOLM	✓		
REP. BILL THOMAS	✓		
REP. RON STOKER	✓		
REP. GAIL GUTSCHE	✓		
REP. GEORGE EVERETT	✓		
REP. BRAD NEWMAN	✓		
REP. JIM SHOCKLEY, CHAIRMAN	✓		



HOUSE STANDING COMMITTEE REPORT

January 21, 2003

Page 1 of 1

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 197** (first reading copy -- white) do pass as amended.

Signed: _____

Representative Jim Shockley, Chair

And, that such amendments read:

1. Page 16, line 18.

"NEW SECTION. Section 14. Coordination instruction. If a senate or house bill is passed and approved that amends 61-8-406(1)(a) by substituting ".08" for "0.10", then ".08" is substituted for "0.10" in 61-5-205(2)(a) as amended by [this act]."

Renumber: subsequent section

- END -

Committee Vote:
Yes 18, No 0.

121320SC.hhn

1-21-03
JK

COMMITTEE ABSENTEE BALLOT

Date: 1/21/2003

I hereby authorize Rep. P. CLARK

to cast my vote(s) as follows:

yes on HB 171 DO pass motion
yes on 197
yes on 210
yes on 212
yes on 209

Representative Chris Harris

1 HOUSE BILL NO. 197

2 INTRODUCED BY BECKER

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO REVOCATIONS,
6 SUSPENSIONS, AND RECORDKEEPING OF DRIVER'S LICENSES; REMOVING THE REQUIREMENT THAT
7 THE DEPARTMENT OF JUSTICE ESTABLISH BY ADMINISTRATIVE RULE A DRIVER REHABILITATION
8 AND IMPROVEMENT PROGRAM THAT INCLUDES A REQUIREMENT TO CONTRACT WITH PRIVATE
9 ENTITIES FOR THE OPERATION OF PROGRAM COURSES; CLARIFYING THE REQUIREMENTS FOR
10 OBTAINING AND USING A DRIVING RECORD FROM ANOTHER JURISDICTION FOR A PERSON APPLYING
11 FOR A MONTANA DRIVER'S LICENSE; REVISING REQUIREMENTS FOR THE SUSPENSION AND
12 REVOCATION OF A DRIVER'S LICENSE FOR CONVICTIONS OF CERTAIN OFFENSES AND BREATH

**THERE ARE NO CHANGES IN THIS BILL AND
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HOUSE BILL NO. 197

INTRODUCED BY BECKER

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO REVOCATIONS, SUSPENSIONS, AND RECORDKEEPING OF DRIVER'S LICENSES; REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF JUSTICE ESTABLISH BY ADMINISTRATIVE RULE A DRIVER REHABILITATION AND IMPROVEMENT PROGRAM THAT INCLUDES A REQUIREMENT TO CONTRACT WITH PRIVATE ENTITIES FOR THE OPERATION OF PROGRAM COURSES; CLARIFYING THE REQUIREMENTS FOR OBTAINING AND USING A DRIVING RECORD FROM ANOTHER JURISDICTION FOR A PERSON APPLYING FOR A MONTANA DRIVER'S LICENSE; REVISING REQUIREMENTS FOR THE SUSPENSION AND REVOCATION OF A DRIVER'S LICENSE FOR CONVICTIONS OF CERTAIN OFFENSES AND BREATH TESTING REFUSALS; REVISING AUTHORITY TO IMPOSE A DISCRETIONARY LICENSE SUSPENSION; REVISING THE REQUIREMENT FOR SUSPENDING A LICENSE FOR A CONVICTION OF DRIVING WHILE A LICENSE IS SUSPENDED OR REVOKED; REMOVING THE REQUIREMENT THAT THE DEPARTMENT SUSPEND THE DRIVER'S LICENSE OF A PERSON WHO FAILS TO COMPLY WITH CERTAIN DRIVER REHABILITATION AND IMPROVEMENT COURSE REQUIREMENTS; REMOVING THE DEFINITION OF "DRIVER IN NEED OF REHABILITATION AND IMPROVEMENT"; AMENDING SECTIONS 61-2-302, 61-5-107, 61-5-205, 61-5-206, 61-5-208, 61-5-212, 61-7-103, 61-8-402, 61-8-409, 61-8-734, 61-11-203, 61-11-204, AND 61-13-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-2-302, MCA, is amended to read:

"61-2-302. Establishment of driver rehabilitation and improvement program -- department to contract with private entities -- participation by offending drivers. (1) ~~(a)~~ The department ~~shall~~ may establish by administrative rules a driver rehabilitation and improvement program or programs, ~~that~~ The programs may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques and must include the requirements for obtaining a restricted probationary

1 driver's license.

2 ~~(b) The rules must:~~

3 ~~—— (i) provide for the local program courses to be operated by private entities;~~

4 ~~—— (ii) develop a procedure for certifying private entities as driver rehabilitation and improvement course~~
5 ~~providers;~~

6 ~~—— (iii) establish the criteria that private entities must meet in order to be certified by the department; and~~

7 ~~—— (iv) provide for an alternative driver rehabilitation and improvement procedure for drivers who live in~~
8 ~~areas where a course is not offered.~~

9 (2) ~~Official participation in the driver rehabilitation and improvement program is limited to those persons~~
10 ~~whose license to operate a motor vehicle in the state of Montana~~ Except when otherwise provided or restricted
11 by statute, a person whose driver's license is suspended or revoked by the department may participate in any
12 driver rehabilitation and improvement program established under this section if the person's license is:

13 (a) ~~(i) subject to suspension or revocation~~ suspended as a result of a violation of the traffic laws of this
14 state, unless the suspension was imposed under the authority provided in Title 61, chapter 8, part 8; or;

15 (ii) unless otherwise provided by the sentencing court, is suspended under 45-5-624(2)(b); or

16 (b) ~~revoked and they have~~ the person has:

17 (i) ~~completed at least 3 months of a 1-year revocation or, if revocation is for a second or subsequent~~
18 ~~violation of 61-8-401 or 61-8-406, have provided the department with proof of compliance with the ignition~~
19 ~~interlock device restriction imposed under 61-5-208; or~~

20 (ii) ~~completed 1 year of a 3-year revocation; and~~

21 (iii) ~~met the requirements for reobtaining a Montana driver's license; or~~

22 ~~—— (c) subject to suspension as provided in 61-11-204(3).~~

23 (3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana,
24 the enforcement of any suspension or revocation order that constitutes the basis for any person's participation
25 in the driver rehabilitation and improvement program provided for in this section may be stayed if that person
26 complies with the requirements established for the driver rehabilitation and improvement program and meets
27 the eligibility requirements of subsection (2).

28 (4) ~~In the event that~~ If a person's driver's license has been surrendered before the person's selection
29 for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt
30 of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation ~~order~~ action must be terminated and the ~~order of~~ suspension or revocation ~~enforced~~ action must be reinstated if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

~~(7) The department and the entity with which the department contracts under subsection (1)(b) shall establish separate fee schedules that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be collected separately by the department and by the entity with which the department contracts under subsection (1)(b).~~

~~(8) The fees collected by the department under subsection (7) must be used to help defray costs incurred by the department in administering the program and in contracting with private entities as provided in subsection (1). The department may not use the fees collected under subsection (7) for any other purpose.~~

(7) The department may establish a schedule of fees that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be used to help defray costs of maintaining the program.

~~(9)~~(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

~~(10)~~(9) (a) Except as provided in ~~(10)(b)~~ subsection (9)(b), the department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(b) The department may not issue a restricted probationary license that would permit an individual to drive a commercial motor vehicle during a period in which:

(i) the individual is disqualified from operating a commercial motor vehicle under state or federal law;
or

(ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

~~(11)~~(10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to the person under this section."

Section 2. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each

application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must include the full legal name, date of birth, sex, residence address of the applicant [and the applicant's social security number], must include a brief description of the applicant, and must include a statement that allows the department to determine if:

(a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country;

(b) any commercial driver's license has ever been suspended or revoked;

(c) an application has ever been denied and, if so, the date of and reason for suspension, revocation, or denial;

(d) the applicant has a physical or mental disability, limitation, or condition that impairs or may impair the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(e) the applicant relies upon, or intends to rely upon, any adaptive equipment or operational restrictions to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, including the nature of the equipment or restrictions.

[(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) (a) When an application is received from an applicant who is not ineligible for licensure under 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from the previous licensing jurisdiction. The driving record may be transmitted manually or by electronic medium. ~~When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.~~

(b) When received, the driving records must be appended to the driver's record created and maintained in this state. The department may rely on information contained in driving records received under this section to determine the appropriate action to be taken against the applicant upon subsequent receipt of a report of a conviction or other conduct requiring suspension or revocation of a driver's license under state law. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

Section 3. Section 61-5-205, MCA, is amended to read:

"61-5-205. Mandatory revocation or suspension of license upon ~~proper authority~~ certain convictions -- duration of action -- exceptions. (1) ~~The department upon proper authority shall revoke the an individual's driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for any of the following offenses, when the conviction or forfeiture has become final or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:~~

(a) negligent homicide resulting from the operation of a motor vehicle;

~~(b) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more;~~

~~(c)~~(b) any felony in the commission of which a motor vehicle is used;

~~(d)~~(c) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

~~(e)~~(d) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles; or

~~(f) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; or~~

~~(g)~~(e) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) ~~The department upon proper authority shall suspend the driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for~~ The department shall suspend an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol

1 or drugs or operating a motor vehicle with a blood alcohol concentration of 0.10 or more;

2 (b) three reckless driving offenses committed within a period of 12 months; or

3 (c) a theft offense under 45-6-301 when the conviction or forfeiture has become final if the theft
4 consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense. The
5 suspension must be for 30 days for a first offense, 6 months for a second offense, and 1 year for a third or
6 subsequent offense.

7 (3) A revocation under subsection (1) must be for a period of 1 year.

8 (4) (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection (2) must be
9 for a period of 1 year.

10 (b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208(2)(b).

11 (c) A suspension under subsection (2)(c) must be for one of the following periods:

12 (i) 30 days for a first offense;

13 (ii) 6 months for a second offense; and

14 (iii) 1 year for a third or subsequent offense."

15
16 **Section 4.** Section 61-5-206, MCA, is amended to read:

17 **"61-5-206. Authority of department to suspend license or driving privilege or issue probationary**
18 **license.** (1) The department may suspend the driver's license or driving privilege of a driver without preliminary
19 hearing upon a showing by its records or other sufficient evidence that the licensee:

20 ~~(a) has been involved as a driver in any accident resulting in the death or personal injury of another or~~
21 ~~serious property damage;~~

22 ~~—— (b) has been convicted with such frequency of serious offenses against traffic regulations governing~~
23 ~~the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other~~
24 ~~persons on the highways;~~

25 ~~—— (c) is a habitually reckless or negligent driver of a motor vehicle;~~

26 ~~—— (d) is incompetent to drive a motor vehicle;~~

27 ~~(e)(a) has committed or permitted an unlawful or fraudulent use of the license as specified in 61-5-302;~~

28 ~~(f) has committed an offense in another state that if committed in this state would be grounds for~~
29 ~~suspension or revocation;~~

30 ~~(g)(b) has falsified the licensee's date of birth on the application for a driver's license;~~

(h)(c) is under 21 years of age and has altered the licensee's or another's driver's license or identification card to obtain alcohol; or

(h)(d) has authorized another to use the licensee's driver's license or identification card to obtain alcohol;

or

~~(j) has been declared a driver in need of rehabilitation and improvement, as defined in 61-11-203, and has failed to enroll in or successfully complete, within 90 days of notice, a driver rehabilitation and improvement course or other appropriate course determined by the department as provided in 61-11-204.~~

(2) However, the department may, in lieu of suspending the license or driving privilege, issue a probationary license to a driver, without preliminary hearing, upon a showing by its records or other sufficient evidence that the licensee's driving record would authorize suspension as provided in subsection (1). Upon issuance of a probationary license, the licensee is subject to the restrictions set forth in the probationary license. The licensee's driving privilege may be suspended upon conviction or forfeiture of bail not vacated of any traffic violation during the period of probation. The licensee shall surrender to the department all driver's licenses that have been issued to the licensee before the probationary license may be issued. The licensee's refusal or neglect to surrender the licenses upon demand is grounds for suspending all licenses. Probationary licenses may be issued for a period not to exceed 12 months.

(3) Upon suspending the license of any person or upon placing the person on probation, as authorized in this section, the department shall immediately notify the licensee in writing and upon the licensee's request shall afford the licensee an opportunity for a hearing as early as practical, within 20 days after receipt of the request, in the county in which the licensee resides unless the department and the licensee agree that the hearing may be held in some other county. At the hearing, the department through its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. At the hearing, the department shall either rescind its order of suspension or probation or, for good cause, may affirm, reduce, or extend the period of probation or suspension of the license."

Section 5. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation -- probationary license -- ignition interlock device required on second or subsequent offense. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise

1 permitted by law.

2 (2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on
3 the public highways has been suspended or revoked may not have the license, endorsement, or privilege
4 renewed or restored until the revocation or suspension period has been completed.

5 (b) When a person is convicted or forfeits bail or collateral not vacated for the offense of operating or
6 being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a
7 combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol
8 concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or
9 collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months.
10 Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense
11 within 5 years of the first offense, the department shall ~~revoke~~ suspend the license or driving privilege of the
12 person for a period of 1 year and, upon issuance of any restricted probationary license during the period of
13 ~~revocation~~ suspension, restrict the person to driving only a motor vehicle equipped with a functioning ignition
14 interlock device. If the 1-year period passes and the person has not completed a chemical dependency
15 education course, treatment, or both, as ordered by the sentencing court, the license ~~revocation~~ suspension
16 remains in effect until the course, treatment, or both, are completed.

17 (c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third,
18 or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior
19 conviction and the date of the offense that resulted in the most recent conviction.

20 (3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof
21 of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license
22 suspension of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's
23 driver's license. The stay must remain in effect until the period of suspension has expired and any required
24 chemical dependency education course, treatment, or both, have been completed.

25 (b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the
26 person has violated the court-imposed ignition interlock restriction by, including but not limited to operating a
27 motor vehicle not equipped with the device, tampering with the device, or removing the device before the period
28 of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder
29 of the time period. The department may not issue a probationary driver's license to a person whose license
30 suspension has been reinstated because of violation of an ignition interlock restriction.

1 ~~(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in~~
2 ~~subsection (2).~~

3 ~~(5)(4)~~ (a) Except as provided in subsection (4)(b), the period of suspension or revocation for a
4 person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's
5 license commences from the date of conviction or forfeiture of bail.

6 (b) A suspension commences from the last day of the prior suspension or revocation period if the
7 suspension is for a conviction of driving with a suspended or revoked license.

8 ~~(6)(5)~~ If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor
9 vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

10

11 **Section 6.** Section 61-5-212, MCA, is amended to read:

12 **"61-5-212. Driving while license suspended or revoked -- penalty -- seizure of vehicle or rendering**
13 **vehicle inoperable.** (1) A person who drives a motor vehicle or commercial motor vehicle on any public highway
14 of this state at a time when the person's privilege to do so is suspended or revoked in this state or any other state
15 is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than 2 days or
16 more than 6 months and may be fined not more than \$500.

17 (2) The department upon receiving a record of the conviction of any person under this section upon a
18 charge of driving a vehicle while the person's driver's license was suspended or revoked shall extend the period
19 of suspension or revocation for an additional ~~like~~ 1-year period.

20 (3) The vehicle owned and operated at the time of an offense under this section by a person whose
21 driver's license is suspended ~~or revoked~~ for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409,
22 or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the
23 convicted person's county of residence for a period of 30 days.

24 (4) The sentencing court shall order the action provided for under subsection (3) and shall specify the
25 date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered
26 inoperable by the sheriff within 10 days after the conviction.

27 (5) A convicted person is responsible for all costs associated with actions taken under subsection (3).
28 Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3)
29 unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner
30 who is determined to be without fault.

(6) A court may not suspend or defer imposition of penalties provided by this section."

Section 7. Section 61-7-103, MCA, is amended to read:

"61-7-103. Accidents involving death or personal injuries. (1) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop ~~such the~~ vehicle at the scene of ~~such the~~ accident or as close ~~thereto~~ to the accident as possible; but shall then ~~forthwith~~ return to and in every event ~~shall~~ remain at the scene of the accident until ~~he~~ the driver has fulfilled the requirements of 61-7-105. ~~Every such stop shall~~ Each stop at the scene of the accident must be made without obstructing traffic more than is necessary.

(2) ~~Any person~~ A driver failing to stop or to comply with ~~said the~~ requirements ~~under such circumstances~~ of subsection (1) shall upon conviction be punished by imprisonment for not less than 30 days or more than 1 year, ~~or~~ by a fine of not less than \$100 or more than \$5,000, ~~or~~ by both ~~such~~ fine and imprisonment.

(3) The department shall revoke the license or permit to drive of any resident and any nonresident operating privilege of ~~any a~~ person ~~so~~ convicted of violating this section for the period prescribed in ~~61-5-208~~ 61-5-205."

Section 8. Section 61-8-402, MCA, is amended to read:

"61-8-402. Blood or breath tests for alcohol, drugs, or both. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage, bodily injury, or death.

(b) The arresting or investigating officer may designate which test or tests are administered.

1 (3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of
2 refusal is considered not to have withdrawn the consent provided by subsection (1).

3 (4) If an arrested person refuses to submit to one or more tests requested and designated by the officer
4 as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the
5 department, immediately seize the person's driver's license. The peace officer shall immediately forward the
6 license to the department, along with a report certified under penalty of law stating which of the conditions set
7 forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to
8 submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the
9 department shall suspend the license for the period provided in subsection (6).

10 (5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a
11 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of
12 issuance, and shall provide the driver with written notice of the license suspension ~~or revocation~~ and the right
13 to a hearing provided in 61-8-403.

14 (6) The following suspension ~~and revocation~~ periods are applicable upon refusal to submit to one or
15 more tests:

16 (a) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

17 (b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the
18 records of the department, a ~~revocation~~ suspension of 1 year with no provision for a restricted probationary
19 license.

20 (7) A nonresident driver's license seized under this section must be sent by the department to the
21 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or
22 more tests.

23 (8) The department may recognize the seizure of a license of a tribal member by a peace officer acting
24 under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating
25 a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation
26 requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred
27 within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department
28 under this subsection is not reviewable under 61-8-403.

29 (9) A suspension under this section is subject to review as provided in this part.

30 (10) This section does not apply to blood and breath tests, samples, and analyses used for purposes

1 of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an
2 offense not in this part."

3
4 **Section 9.** Section 61-8-409, MCA, is amended to read:

5 **"61-8-409. Preliminary alcohol screening test.** (1) A person who operates or is in actual physical
6 control of a vehicle upon ways of this state open to the public is considered to have given consent to a
7 preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol
8 concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving
9 or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of
10 alcohol or in violation of 61-8-410.

11 (2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting
12 to a preliminary alcohol screening test pursuant to this section.

13 (3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit
14 to the preliminary alcohol screening test will result in the suspension ~~or revocation~~ for up to 1 year of that
15 person's driver's license.

16 (4) If the person refuses to submit to a test under this section, a test will not be given. However, the
17 refusal is sufficient cause to suspend ~~or revoke~~ the person's driver's license as provided in 61-8-402.

18 (5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited
19 to determining whether a peace officer had a particularized suspicion that the person was driving or in actual
20 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or
21 in violation of 61-8-410 and whether the person refused to submit to the test.

22 (6) The provisions of 61-8-402 (3) through (8) that do not conflict with this section are applicable to
23 refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same
24 incident, the department may not consider each a separate refusal for purposes of suspension ~~or revocation~~
25 under 61-8-402.

26 (7) A test may not be conducted or requested under this section unless both the peace officer and the
27 instrument used to conduct the preliminary alcohol screening test have been certified by the department
28 pursuant to rules adopted under the authority of 61-8-405(5)."

29
30 **Section 10.** Section 61-8-734, MCA, is amended to read:

1 **"61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
2 **concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of**
3 **sentence not allowed.** (1) (a) For the purpose of determining the number of convictions under 61-8-714 or
4 61-8-722 for a violation of 61-8-401 or 61-8-406, "conviction" means a final conviction, as defined in 45-2-101,
5 in this state; conviction for a violation of a similar statute or regulation in another state, or a federally recognized
6 Indian reservation; or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court
7 in this state, another state, or a federally recognized Indian reservation, which forfeiture has not been vacated.

8 (b) An offender is considered to have been previously convicted for the purposes of sentencing if less
9 than 5 years have elapsed between the commission of the present offense and a previous conviction, unless
10 the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used
11 for sentencing purposes.

12 (c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be
13 counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or
14 61-8-406.

15 (2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under
16 61-8-714 or 61-8-722 be served in another facility made available by the county and approved by the sentencing
17 court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may
18 impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant
19 follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease
20 center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the
21 sentencing court.

22 (3) Subject to the limitations set forth in 61-8-714 and 61-8-722 concerning minimum periods of
23 imprisonment, the court may order that a term of imprisonment imposed under either section be served by
24 imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

25 (4) A court may not defer imposition of sentence under 61-8-714, 61-8-722, or 61-8-731.

26 (5) The provisions of 61-2-107, 61-2-302, 61-5-205(1)(b)(2), and 61-5-208(2), relating to suspension
27 ~~and revocation~~ of driver's licenses and later reinstatement of driving privileges, apply to any conviction under
28 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406."
29

30 **Section 11.** Section 61-11-203, MCA, is amended to read:

1 **"61-11-203. Definitions.** As used in this part, the following definitions apply:

2 (1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty or nolo
3 contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged
4 with having committed any offense relating to the use or operation of a motor vehicle that is prohibited by law,
5 ordinance, or administrative order.

6 ~~(2) "Driver in need of rehabilitation and improvement" means a person who within a 2-year period~~
7 ~~accumulates 18 or more conviction points according to the schedule specified in subsection (3).~~

8 ~~(3)~~(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more
9 conviction points according to the schedule specified in this subsection:

10 (a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

11 (b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or
12 negligent vehicular assault, 12 points;

13 (c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the
14 commission of which a motor vehicle is used, 12 points;

15 (d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation
16 of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

17 (e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

18 (f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any
19 person to stop at the scene of the accident and give the required information and assistance, as defined in
20 61-7-105, 8 points;

21 (g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the
22 scene of the accident and give the required information or failure to otherwise report an accident in violation of
23 the law, 4 points;

24 (h) reckless driving, 5 points;

25 (i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

26 (j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5
27 points;

28 (k) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not apply to
29 operating a motor vehicle within a period of 180 days from the date the license expired);

30 (l) speeding, except as provided in 61-8-725(2), 3 points;

(m) all other moving violations, 2 points.

~~(4)~~(3) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.

~~(5)~~(4) "License" means any type of license or permit to operate a motor vehicle.

~~(6)~~(5) "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway, as the term is defined in 61-1-201.

~~(7)~~(6) A traffic regulation includes any provision governing motor vehicle operation, equipment, safety, size, weight, and load restrictions or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking."

Section 12. Section 61-11-204, MCA, is amended to read:

"61-11-204. Department's duties. (1) If the records maintained by the department show that a person's driving record brings the person within the definition of a habitual traffic offender, the department shall:

(a) declare the person a habitual traffic offender;

(b) revoke the person's driver's license or driving privileges as provided in 61-11-211; and

(c) notify the person in writing of the declaration and revocation.

(2) The notice must be sent by first-class mail to the most current address on record with the department. The notice must include a certified reproduction of the person's driving record as contained in the computer storage device used by the department for recordkeeping. The notice must inform the person of the right under 61-11-210 to appeal the declaration and revocation. Service of the notice is complete upon mailing.

~~(3) If the records maintained by the department show that a person's driving record brings the person within the definition of a driver in need of rehabilitation and improvement, the department shall:~~

~~—— (a) declare the person a driver in need of rehabilitation and improvement;~~

~~—— (b) notify the person that unless the person enrolls in and successfully completes, within 90 days of notification, a certified driver rehabilitation and improvement course, as provided in 61-2-302, the person's driver's license will be suspended for a period not to exceed 6 months or until the person has successfully completed the course, whichever occurs first;~~

~~—— (c) provide the person with a list of certified driver rehabilitation and improvement courses and~~

1 information about how the person may comply with the provisions of this subsection (3) if a driver rehabilitation
2 and improvement program does not exist near the person's residence; and

3 ~~----- (d) send the notice as provided in subsection (2).~~

4 ~~----- (4) If the person fails to enroll in a certified driver rehabilitation and improvement program or fails to~~
5 ~~successfully complete the program or an appropriate substitute within 90 days, the department may suspend~~
6 ~~the person's driver's license as provided in 61-5-206 for a period not to exceed 6 months or until the person has~~
7 ~~successfully completed the course, whichever occurs first."~~

8
9 **Section 13.** Section 61-13-104, MCA, is amended to read:

10 **"61-13-104. Penalty -- no record permitted.** (1) A driver who violates 61-13-103 shall be fined \$20,
11 but the violation is not a misdemeanor pursuant to 45-2-101, 46-18-236, 61-8-104, or 61-8-711. A violation of
12 61-13-103 may not be counted as a moving violation for purposes of suspending a driver's license under
13 61-11-203(3)(m)(2)(m). Bond for this offense is \$20, and a jail sentence may not be imposed.

14 (2) A violation of 61-13-103 may not be recorded or charged against the driver's record of a person
15 violating 61-13-103.

16 (3) An insurance company may not hold a violation of 61-13-103 against the insured or increase the
17 insured's premiums due to a violation of 61-13-103."

18
19 **NEW SECTION. SECTION 14. COORDINATION INSTRUCTION. IF A SENATE OR HOUSE BILL IS PASSED AND**
20 **APPROVED THAT AMENDS 61-8-406(1)(A) BY SUBSTITUTING "0.08" FOR "0.10", THEN "0.08" IS SUBSTITUTED FOR "0.10"**
21 **IN 61-5-205(2)(A) AS AMENDED BY [THIS ACT].**

22
23 **NEW SECTION. Section 15. Effective date.** [This act] is effective on passage and approval.

24 - END -

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 7, 2003 at
9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cindy Peterson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 197, 2/25/2003; HB 211,
2/25/2003; HB 171, 2/25/2003
Executive Action:

HEARING ON HB 197

Sponsor: Rep. Arlene Becker, HD 18, Billings.

Proponents: Brenda Nordland, Department of Justice
Dean Roberts, Administrator,
Motor Vehicle Division

Opponents: Tony Steffins, Rocky Mountain Traffic School
Sen. John Esp, SD 13, Big Timber

Opening Statement by Sponsor:

Rep. Becker is sponsoring this bill at the request of the Department of Justice. The bill will change and streamline business practices mandated under state law for the Records and Driver Control Bureau of the Department's Motor Vehicle Division (DMV). This bureau is responsible maintaining the individual driving records of all the drivers' licenses in Montana. They revoke a person's driver's license as required by law and oversee the issuance of probationary drivers' licenses. In 2001, the bureau entered 95,692 traffic convictions on various driving records. They took 19,189 conduct-based suspension and revocation actions against the driving records. HB 197 will change three mandates in state law in an effort to streamline the bureau's business practices. First, it will repeal the requirement that the department develop a program to require drivers who obtain 18 or more traffic conviction points within a two-year period attend a driver rehabilitation and improvement program offered by private entities certified by the department. The bureau has developed standards for the program, but was unable to implement the program prior to the imposition of the executive budget cuts in the 2002 Special Session. As a result of these cuts, the bureau can no longer hire an employee to complete the development of the program and oversee the program. The DMV was cut seven FTEs in the special session.

The second objective of the bill is to clarify the record-keeping responsibilities when a driver, who is previously licensed in another jurisdiction, is issued a Montana driver's license. Thirdly, the bill changes mandates for the withdrawal of an individual's driving privilege from a revocation to a suspension.

Proponents' Testimony:

Brenda Nordland, representing the Department of Justice, submitted a fact sheet in support of HB 197, EXHIBIT(jus48a02). **Ms. Nordland** addressed the Committee about the wise use of motor vehicle resources in austere times. **Ms. Nordland** explained these

are policy choices made by the Legislature in past sessions and she would like the Committee to reconsider these past actions by changing DMV mandates.

The first thing **Ms. Nordland** would urge the Committee to do is repeal SB 334. This bill was passed by the 57th Legislature and was sponsored by **Sen. Grosfield** and had a fiscal note which reasonably estimated what it would take to start the program. It also stated it would take one FTE, plus operating expenses for the FTE. During the last biennium, they were unable to set up that program. The program required setting the standards for private companies to render a service to drivers who accumulate 18 conviction points on their traffic record in a two-year period. This standard would be applied to any vendor who chose to operate the service in Montana. The standard would also have to be applied, and the state-approved curriculum developed, to any Internet provider who would provide services to offenders in remote locations. **Ms. Nordland** did not appear to argue the merits of the program, but informed the Committee that if the DMV is not given the resources to implement the program, they cannot live with a mandate in the laws. In the past year, Ms. Nordland has seen two habitual offender declarations jeopardized because the mandate was not implemented. Criminal defense attorneys argued that Montana law says a driver in need of rehabilitation must be notified when he reaches 18 points. Since that notification did not occur, an offender's due process is violated. The DMV is between a rock and a hard place. Since the FTE and operating expenses were denied, then the provisions of SB 334 need to be repealed. Without the repeal, the DMV will be called into court to respond as to why they are not providing the notice required by law.

Section 1 of the bill is the gateway for probationary drivers' licenses in Montana. Most of the bulk of the changes in this section deal with repealing SB 334. **Ms. Nordland** directed the Committee to page 4, lines 26-30, and continuing onto page 5. This will repeal the mandate that states when DMV receives a driver's license application from an individual previously licensed in another state, they will obtain that individual's driving record from the other jurisdiction, and then treat it as if that driving record occurred in Montana. **Ms. Nordland** then spoke about the Supreme Court's decision, Chain v. Mont. Dep't of Motor Veh., 2001 MT. 224, 306 Mont. 491, which states that an out-of-state driving record of an applicant must be treated as if the violations occurred in the State of Montana. This required the DMV to implement an entirely new business practice where they had to contact the other state, obtain the driving record, analyze the record, and decide what would have happened under Montana law.

(Tape : 2; Side : B)

Ms. Nordland is asking the Committee to recommend changing the law so they will no longer have to go through this process. **Ms. Nordland** feels they should only have to go after the out-of-state records if they know they are going to be issuing a driver's license. They will then respect the sovereign authority of that state.

Ms. Nordland explained a suspension or revocation of a driver's license is a withdrawal of the privilege. The difference between a revocation and a suspension is important. If they suspend a driver's license, the license comes back into being as soon as the period of suspension passes. A revocation, even if it is only for one year and the license had six years left before the expiration date, the license is terminated, meaning the individual starts over at the beginning. This is a resource-intensive activity. **Ms. Nordland** asked the Committee to reduce the number of actions which require revocation of a license and change them to license suspensions. This will reduce the number of applicants that get routed through the exam stations. **Ms. Nordland** feels these stations should be used for those applicants who truly need them as a service.

Ms. Nordland explained Section 4 will eliminate some of the bureau's discretionary authority to suspend a driver's license. **Ms. Nordland** would not advise the bureau to exercise that authority under any circumstance since there are no standards. For the most part, there are other laws they can use to take an action against a driver.

Section 5 will convert suspensions into revocations for those who have a second or subsequent DUI or BAC. They believe felony DUIs should receive a revocation of a driver's license. Suspensions, however, should be considered for early DUI offenses, implied consents, BACs, and preliminary breath testing refusals.

Under current law, each time a person is convicted of driving while suspended, a like period of suspension is given. **Ms. Nordland** explained that just adding an additional one-year period to the suspension makes it easier to administer.

Ms. Nordland explained this is a technical bill, but stated the DMV is struggling to meet its workload, and that workload is steadily increasing. This is a problem that needs to be dealt with pro-actively.

Dean Roberts, Administrator of the Motor Vehicle Division, supports HB 197 and stated he would be glad to answer any budget questions regarding the legislation.

Opponents' Testimony:

Tony Steffins, representing Rocky Mountain Traffic School, and a law enforcement officer, submitted written testimony in opposition to HB 197, EXHIBIT(jus48a03), and stated he worked with a number of people in the development of SB 334. Rocky Mountain Traffic School works closely with the Department of Justice, Department of Transportation, and other agencies. **Mr. Steffins** opposes HB 197 because it makes SB 334 ineffective and eliminates his entire program. **Mr. Steffins** believes SB 334 is a good law, and urged the Committee to keep the law in tact. The only thing missing is the one FTE. **Mr. Steffins** would like to see more authority with the DMV, not less. **Mr. Steffins** closed by stating safety on the roadways requires the commitment of everyone. The safety program of the Federal Highway Administration focuses on the three Es-- engineering, education, and enforcement. **Mr. Steffins** believes that education is a very effective tool.

Sen. John Esp, SD 13, Big Timber, representing former **Senator Lorents Grosfield,** submitted written testimony from **Sen. Grosfield, EXHIBIT(jus48a04).**

Questions from Committee Members and Responses:

SEN. CROMLEY asked **Ms. Nordland** if the challenges made by habitual offenders due to lack of notice were successful.

Ms. Nordland responded Judge Fagg ruled in favor of the county attorney who defended the DMV. However, in Judge Harkin's court in Missoula, the county attorney stipulated to the due process violation. Therefore, there are competing authorities.

CHAIRMAN GRIMES stated some of the language in the bill deals with mandates and some of the language deals with notice requirements and the driver improvement program, and he wonders if there is a way to amend the law, as opposed to taking it completely off the books. **SEN. GRIMES** wondered if there were alternatives which would deal with the notice requirements, but still allow the programs to exist.

Ms. Nordland stated this is not just an issue about providing notice. The problem is bringing up and overseeing a program where multiple vendors are asking to be certified by the state as

providing this service, and having a person that can oversee the program. **Ms. Nordland** suggested there has been a sizeable drop in the number of FTEs in the division, but the workload has increased exponentially. The bottom line is there is no easy way out without the FTE.

CHAIRMAN GRIMES asked about the funding and the expenditure made in the last session.

Ms. Nordland responded there was contemplation that fees would be paid to the Department for individuals who were effected and fees paid to the private vendors for participating. Those fees were to go into a special revenue account, and there was no authority to spend any general revenue funds.

(Tape : 3; Side : A)

This means hiring a Grade 12 FTE with no funding authorization. The assumption was this position would eventually be funded from a revenue stream created by the special funds. However, when you hire an employee, you need to pay them like everyone else. The seed money was not there to hire the FTE. There are many things in Montana that we do not have that other states do have such as a graduated driver licensing program or a medical review board to oversee medically impaired drivers. Montana is a resource-scarce state.

SEN. MANGAN stated there are private businesses in place ready to provide these services. He wondered about having the private businesses to do the certification and collect the fees.

Ms. Nordland responded their hiring authority has to come from the Legislature. They do not hire anybody unless the Legislature says they can.

SEN. MANGAN clarified that he is not speaking about hiring a company, but maybe granting authority in the rules. Then everything could be done by the private sector, with just one company reporting back to DMV and the state only providing oversight.

Ms. Nordland stated **SEN. MANGAN's** suggestion sounds like an RFP process. Fundamentally, whenever third parties perform services which are governmental functions, there needs to be oversight. That oversight would need to be provided by an FTE. Even when there is a contract with a private entity, there are contract management responsibilities. It is not a resource-free situation. While she understands the appeal of having this provided by private entities and she believes the private

entities are passionate about what they teach, they still need to figure out a way for these individuals to operate under the auspices of state government.

SEN. O'NEIL asked **Mr. Steffins** if he could write an amendment for the bill which would address **Ms. Nordland's** concerns, as well as provide a way for **Mr. Steffins** to keep his program going.

Mr. Steffins stated his desire was to get a program which was certified and overseen by the state for a number of reasons. The state has the ability to check driving records, and he does not. The state also has the ability to decide who is a driver in need of improvement, and he does not. For the most part, his referrals come directly from courts of limited jurisdiction. He believes firmly that if the state could get a FTE funded for the first year, this program would not only generate funds, but would cover that full-time employee and would generate an excess of revenue for the state because of the fee.

SEN. CURTISS inquired how many private entities are available to provide these services.

Mr. Steffins knows of at least three other private venues which currently offer defensive driving courses in the state.

SEN. CURTISS asked **Ms. Nordland** if there were requirements in SB 334 which would have necessitated the certification procedures set forth by the Department.

Ms. Nordland directed the Committee to page 2 of the bill, lines 2 through 8, which is where the Legislature decided what was required for these types of programs.

Dean Roberts responded that DMV had rulemaking authority to develop standards. There are number of Internet companies that do this now, and those are used by most states. **Mr. Roberts** stated the Steffins helped develop most of those standards for these companies.

SEN. CURTISS wondered why it took so long for the Department to determine that they were not going to be able to do this within the time frame set forth.

Mr. Robert replied that they have limited staff and were responsible for implementing many laws. They also ran into problems with their budget in April 2002 when they were informed there was going to be substantial cuts made. They then had to make a decision not to use their general fund resources since those funds were very limited. They had to make decisions about

how to spend their resources. There is currently an amendment on HB 2 to take another \$700,000 out of DMV. It comes down to asking yourself where are you going to spend your resources. There resources right now are in driver's license stations. DMV feels it has an obligation to the citizens of Montana to keep rural driver's license stations open.

SEN. CURTISS commented that given the fact there was only one FTE involved, it seems difficult to understand why DMV could not go forward with this program. Also, **SEN. CURTISS** would like to know what happened to the \$33,000 which was specified for the one FTE.

Mr. Roberts stated the \$33,000 was never allocated out of the general fund. All of the money in the program, including the administrative expense, was to come from the proceeds. Not one nickel in HB 2 was appropriated for this program.

SEN. CURTISS asked if there was federal money available for a project such as this.

Mr. Roberts stated that was a good question and they are presently working with Senator Baucus's office. He told the Committee that taking the provision out will not stop them from having the ability to do a driver rehabilitation program; it just makes it permissive. They have been working with Senator Baucus's office, through Department of Transportation funds to try to fund this program. By removing this language, you stop the courts from saying your habitual offender laws are not effective because you have a statute on the books that says you are supposed to warn people at 18 points. Under the current law, they have the ability to collect fees and conduct a driver's rehabilitation program. The state will continue to pursue that route. It just is not going to happen within the timetable initially set out. **Mr. Roberts** feels Montana needs a habitual offender driver rehabilitation program, and added it needs a medical review board as well.

SEN. CURTISS asked if there was a projected amount expected to initiate the project.

Mr. Roberts replied the fiscal note had \$36,000 for this program, and this included one FTE and some operating expenses. One FTE can serve five rural driver's license stations.

SEN. MIKE WHEAT heard **Mr. Steffins** testify that he believes with the proper amount of seed money to prime the program, it could be off and running.

Mr. Roberts agreed.

SEN. WHEAT affirmed with **Mr. Roberts** that approximately \$36,000 is the amount of seed money needed to prime the program. **SEN. WHEAT** asked if that amount of money were found, could the program sustain itself on the fees generated. **Mr. Roberts** replied it could.

SEN. O'NEIL asked if it would take a full year before the program could sustain itself.

Mr. Roberts replied it would take some amount of time. There is a whole bunch of oversight needed when dealing with a number of companies performing a state contract.

SEN. O'NEIL asked how long it would take before enough fees were in the special account before it would become self-sustaining.

Mr. Roberts could not answer that question, but did not feel it would take very long. The choice is to either stay suspended and not go to the program because of the fee, or you can agree to participate in the program and get your license back. It is difficult to say how many of those citizens who are suspended or revoked would put themselves through the program to get their licenses back. He suspects the program would be self-sustaining within a year.

Ms. Nordland stated that based on an approximate \$31,000 FTE expenditure, and what was used in the fiscal note for SB 334, which was a fee of \$65, the breakeven point is 553 persons would have to pay the fee before the line would be crossed. As a point of reference, last year 513 individuals were declared habitual traffic offenders. There needs to be a significant number in the pipeline before you get to that breakeven point.

SEN. O'NEIL asked if was true the \$36,000 would not be paid to the FTE at the beginning of the year and that they would be paid monthly. In addition, fees would come in monthly.

Ms. Nordland stated that mathematically you could find that breakeven point but there will always be fluctuations in the fees, whereas an employee's salary is constant. Therefore, you would want to build up a cushion to ensure the employee was paid on a biweekly basis. Otherwise, you put the DMV in the same position as it is now, which is they are supposed to pay from a special revenue account, but that account does not have enough money, so they have to borrow from themselves from another revenue sources.

SEN. O'NEIL asked what would happen if the fee were doubled and the program was made mandatory.

Ms. Nordland responded that as you increase fees, you see a choice made by individuals as to whether law enforcement will catch them driving while suspended, as opposed to paying the fees up front. **Ms. Nordland** cautioned there are points at which individual people make economic decisions.

Closing by Sponsor:

Sen. Becker closed by reaffirming it is a good program and a needed program, but there is no money to fund it. That is why she is asking to make the program permissive. The other portions of the bill are important, and they need to be able to get people's out-of-state driving records and treat them as a history. The suspension versus revocation issues are a matter of how a person gets their license back at the end. It will not change any treatments, penalties, or lengths of time.

ADJOURNMENT

Adjournment: 11:30 A.M.

SEN. DUANE GRIMES, Chairman

CINDY PETERSON, Secretary

DG/CP

EXHIBIT (jus48aad)

**DEPARTMENT OF JUSTICE
HB 197: REVISION OF DRIVER LICENSE SUSPENSION,
REVOCATION AND RECORDKEEPING LAWS**

BACKGROUND

The Records and Driver Control Bureau of the Motor Vehicle Division of the Montana Department of Justice is responsible for, among other things:

- maintaining individual records for drivers licensed in Montana,
- suspending or revoking a person's driver's license as required by law and
- overseeing the issuance of probationary driver licenses.

In 2001 the Bureau:

- entered 95,692 traffic convictions on driving records and
- took 19,189 conduct-based suspension or revocation actions

Approximately 12 percent of the withdrawal actions – *more than 2,300* – were revocations.

SB 334

In 2001, the 57th Legislature enacted SB 334. SB 334 required the department to develop and implement a new program, that would utilize private entities to "rehabilitate" or "re-educate" drivers who attain 18 or more traffic conviction points within a two-year period.

Once a driver reached the 18-point mark, SB 334 required the Bureau to notify the driver that he or she had to enroll in a certified driver rehabilitation and improvement course or risk having the driver's license suspended for up to six months.

The driver was expected to pay "user fees" to both the department and the provider of the course. SB 334 also required the Department to devise an alternate procedure for drivers who lived in areas where the required course would not be available.

As of the spring of 2002, the Bureau was working with the individuals who were the impetus behind SB 334 to develop proposed administrative rules to govern the private rehabilitation program. However, before those rules could be published and the program implemented, the FY03 budget shortfall emerged and resources were re-directed to evaluating existing programs and implementing necessary executive budget reductions.

SUPREME COURT OPINION INTERPRETING OUT-OF-STATE DRIVING RECORD PROVISION

On November 14, 2001, the Montana Supreme Court issued a decision, Chain v. Mont. Dep't of Motor Veh., 2001 MT 224, interpreting several statutes that govern the business practices of the Records and Driver Control Bureau. The Court construed one statute – Mont. Code Ann. § 61-5-107(4) – to mandate that the Bureau:

- obtain the out-of-state driving record of every person who applies for a Montana driver's license and who was previously licensed in another jurisdiction, even if the Bureau determined the applicant was not eligible for a Montana driver's license under the provisions of other Montana statutes and
- upon receipt of the out-of-state record, "analyze [that record] in the same fashion as [if] . . . it [had] originally been amassed and entered of record of this state."

The Court also concluded that the department had to permit a person whose driver's license was suspended or revoked in another jurisdiction to apply for a Montana driver's license once one year had passed from the date revocation would have been required in Montana. Even though the revocation in the other jurisdiction had not been completed and Mont. Code Ann. § 61-5-105(2) prohibited the department from issuing a driver's license to a person whose license was suspended or revoked in another state, the Court reasoned that:

- Mont. Code Ann. § 61-5-107(4) required the department to treat an out-of-state driving record as though it was originally entered in Montana
- Mont. Code Ann. § 61-5-208(1), (2)(b), and (4) restricted the department from revoking or suspending a license for more than one year and
- The one-year limitation upon revocation actions by the Department could be applied to convictions on the applicant's out-of-state driving record.

Considering the statutory language, the interpretation rendered by the Court is understandable, however, it represented a vast departure from the Bureau's then-current business practices.

Following Chain, the Bureau implemented a new – and considerably more time-consuming procedure for handling out-of-state driver's license applicants. It involved:

- requesting a driver record from each state in which an applicant was previously licensed and is presently suspended or revoked and
- waiting until the out-of-state record is physically received by the Bureau to confirm what the driver examiner or clerk was able to determine when the application was *first* presented. (Namely, that the applicant's driver's

license or driving privilege is still suspended or revoked in the prior jurisdiction.)

Revocation or suspension

A driver's license revocation is similar to a suspension in that both withdraw an individual's privilege to operate a motor vehicle in the State of Montana for a specific, or in some cases, an indeterminate, period of time.

The primary difference between a license revocation and a license suspension relates to what is required of the driver *after* the period of withdrawal ends and the driver wants the privilege to drive restored.

A suspension temporarily interrupts a person's driving privilege, but the term – or expiration date – of the person's driver's license does not change. Once the period of suspension ends, the Bureau simply changes the individual's license status on its computer system and mails the license back to the driver. After that, the individual may lawfully drive a motor vehicle until that license expires and must be renewed.

A revocation, on the other hand, terminates a person's driving privilege. No matter how much "time" is left on a revoked driver's license, a person whose license is revoked can only regain lawful driving privileges by starting the whole license process over – from the beginning.

To come back into a lawful driving status, a revoked driver must:

- Have an insurance company file a certificate of proof of financial responsibility (SR-22), upon the driver's behalf, with the Department, through the Record and Driver Control Bureau and
- Go to the local exam station, submit a new driver's license application, pay the fees for licensure (\$32 for a typical 8-year license term), successfully complete the written and road test, and have a new license, with a new expiration date, made and entered on the Bureau's computer system.

Once a new license has been issued to a revoked driver, the Records and Driver Control Bureau must track that driver for the next three years to ensure that the driver continuously maintains his or her certificate of proof of financial responsibility.

If the Bureau receives a notice from an insurance company that the coverage for that individual driver is terminated (SR-26), it must "re-revoke" the newly issued driver's license. An exception would be if another insurance carrier files an SR – 22 upon the driver's behalf before the prior SR-22 expires.

The SR-22 and SR-26 filing process is manual, with paper certificates received from carriers, via the mail or telefax. Each change in status or move from carrier to carrier is then tracked and input into the Bureau's electronic driver record.

Proposed Changes

HB 197 proposes to change several statutory mandates in order to streamline the Bureau's business practices in these fiscally difficult times. Those changes are:

- Repeal the provisions of SB 334.
- Modify the requirement to obtain out-of-state driving records and clarify how those records are to be used once received.
- Convert of certain license revocations into license suspensions.
- Clarify when and for what duration certain withdrawal actions will be required.

These changes will allow the Bureau to continue to fulfill its mission and responsibilities under the law, without jeopardizing highway safety.

- To remove a new, but yet to be implemented, program from the law books is not a step backward. It is simply a reality of limited resources and ongoing, multiple expectations.
- To analyze a previously compiled out-of-state driving record under Montana law makes no sense when, at the time the various traffic convictions were entered on the record or suspension or revocation actions taken against the driver, the driver was properly subject to the laws of another jurisdiction. No safety purpose is served by imposing Montana's licensing laws on past conduct contained in the record maintained and already acted upon by another state.
- To accomplish the same effect – loss of driving privileges for a period of time – either suspension or revocation will do, but a suspension is much easier to carry out and "undo" than a revocation. By carefully selecting when revocation is truly needed as an administrative sanction and when suspension will work just as well, the same result can be achieved and the Bureau can more effectively focus its limited resources on providing other valued services to the public.

HOUSE AMENDMENT

The House Judiciary included an amendment to change references in 61-5-205 to a 0.10 alcohol concentration if other House or Senate bills are enacted lowering Montana's legal limit for alcohol concentration in the body to 0.08.

March 7, 2003
Senate Judiciary



SENATE JUDICIARY

Exhibit No. 3Date 3-7-03SB No. HB197

MONTANA STATE SENATE

+++++ WITNESS STATEMENT +++++

NAME Tony SteffinsADDRESS 54 Cooper Lane / PO 825
LivingstonHOME PHONE: 686-4968 WORK PHONE: 222-4181 or
686-4968REPRESENTING Rocky Mtn Traffic SchoolAPPEARING ON WHICH PROPOSAL ? HB 197DO YOU: SUPPORT _____ OPPOSE X AMEND _____

COMMENTS:

Exhibits for distribution

1. Statement
2. 1st page SB 334
3. Arizona Statistics From ADOT
4. Editorial "Highways Suddenly Deadly"
5. DMV - Letter placing farm on hold
6. New Hampshire Statistics

PLEASE LEAVE PREPARED STATEMENT WITH
COMMITTEE SECRETARY

HB 197: Revise Driver License Laws

Montana Statistics:

<u>2001</u>	<u>2002</u>	<u>2003</u>	02
201 Crashes	232 crashes	30 crashes	(2002 at this time 22)
→ Deaths 239	269 Deaths	34 Deaths	(2002 at this time 25)

At present death total is up 36% from last year!!

- ^{Removing the requirement} HB 197 ~~shall~~ require that DMV establish by administrative rule a driver rehabilitation and improvement program

Federal Highway Deputy Administrator Richard Capka

Remarks as prepared for delivery

"put the Brakes on Fatalities"

Tuesday, October 8, 2002

"When it comes to safety "Hope is NOT a Method." It requires hard work, cooperation and the personal commitment of each of us to make our roadways safe. There are risks in everything that we do, However, no matter what the occupation or activity, Unnecessary injury and death is unacceptable. 42,000 deaths on our roads and highways each year are unnecessary and clearly unacceptable."

In 2001 legislative Session, Lorents Grosfield sponsored SB 334

1. SB 334 Mandated that the DMV establish a driver rehabilitation and improvement program-- department to contract with private entities-- participation by offending drivers.
2. SB 334 Mandated that the department develop a procedure for certifying private entities, henceforth, a "state certified program"
3. SB 334 Established definition for "Driver in need of rehabilitation and

improvement" means a person who within a 2 year period accumulates 18 or more conviction points according to the schedule specified in subsection (3)

- HB 197 will amend law and Remove Contract with private entities
- 1. Private entities reduce cost to DMV and offer classes statewide, offer job employment opportunities to Montana Residents.
- 2. In an attempt to implement the "Repeat Offender" program, the DMV has been unsuccessful.
- 3. Private entities are already established throughout the state (please note, locations include: Kalispell, Great Falls, Missoula, Superior, Hamilton, Havre, Livingston, Bozeman, Billings, Miles City, Helena, Cut Bank, Shelby, Butte(classroom and instructor available upon implementation of student referrals: Lewistown, Sidney, Glendive, Glasgow.) Please note, individuals are also offering classes in Libby, Whitefish, Ronan, Red Lodge, Columbus and possibly elsewhere, unknown to RMTS.
- Clarify the requirements for obtaining and using a driving record from another Jurisdiction/ Person applying for a Montana Driver License

DMV
is ready
just need
FTE

14 CURRENT LOCATIONS TOTAL OF 18 AVAILABLE

- HB 197 will Revise the requirement for suspending a license for a conviction of driving while a license is suspended or revoked.
- HB 197 will Reduce the authority of the department to suspend license or driving privilege or issue probationary license.

1. Refer to 61-5-206, a,b,c,d, f,j PAGE 6

- HB 197 Remove requirement that an individual participate in a Driver rehabilitation and improvement course

QUOTE " Richard Capka, Deputy Administrator Federal Highway Administration
Motor Vehicle fatalities are the leading cause of death for all
Americans between the ages of six and 33. It is simply not acceptable."

"Crashes have causes and when you know the cause, you can have more success working on solutions."

1. Discuss statistics:

Arizona: 50% attendance/recidivism after course completion
241 out of 2508 (very low)

New York: as provided at Senate Judiciary hearing from the Department of Motor Vehicles (Brenda Nordland) During an 18 mth period, 84,806 individuals participated in a driver improvement course approved by the DMV. Of the drivers who participated in the program there was a 15% lower crash rate, and a 56% lower conviction rate during the 18 mths following. "Both Texas and California agreed that the state of New York study seemed to support their conclusions. *In Brief, this is about a 15% reduction in accidents and about a 50% reduction in conviction points.*

New Hampshire: Department of Safety statistics from 01/01/93 to 01/08/96. Figures indicated that the major offense recidivism rate for habitual offenders who completed the attitude course was about half that of those who did not. (National Safety Council/Defensive Driving Courses pamphlet)

OUR PROGRAM HAS HAD 1500-2000 STUDENTS, 5-10 HAVE HAD TO REATTEND.

- HB 197 will Remove the definition of "Driver in need of rehabilitation and improvement. *eliminate program!! Change from shall to may!!*
MAKES THE PROGRAM DISCRETIONARY NOT MANDATORY
- 1. House Bill 195: Mandatory penalty provisions for DUI offenders-- for federal funding
- 2. SB 334 had full support from Department of Motor Vehicles, administrative rules have been completed per Mary Lafond. The Rocky Mtn Traffic School has been working with the following agencies and individuals since letter received April 2002 placing bill on hold. (Attorney General, Department of Transportation, Department of Motor Vehicles, Budget Committee, Senator Baucus's office, namely Liz Ching, NHTSA,) The Department of Motor Vehicles needs funding for a FTE. Can Federal Funds for HB 195 be used to fund FTE for both programs? Most Repeat Offenders/ Habitual Offenders will have a DUI offense on their driving record.

3. SB334 passed:

2/12/01 (S) Judiciary Committee execution action--bill passed as
amended 8 yes 0 no

2/15/01 2nd Reading Passed on Voice Vote
49 yes 0 no

2/16/02 3rd Reading Passed 46 yes 1 no

Ending Statement:

"Safety on our roadways requires the commitment of all of us. Our safety

Grimes, Senator Duane

From: Lorents Grosfield [lorents@mcn.net]
Sent: Friday, March 07, 2003 6:08 AM
To: 'Grimes, Senator Duane'
Subject: HB 197

SENATE JUDICIARY
Exhibit No. 4
Date 3-7-03
Bill No. HB197

To: Chairman Grimes and Members of the Senate Judiciary Committee
From: Lorents Grosfield
Date: March 7, 2003
Re: HB 197

Thank you, Chairman Grimes, for distributing this letter to the Committee, as I am unable to attend the hearing later today.

While I am unaware of all that is going on this session regarding revising the statutes for DUI and other driver's license related penalties, I know several bills are dealing with this area, including at least SB 37 and HB 195. I have no quarrel with strengthening this area of the law, and in fact carried SB 489 last session which established the six months in house treatment program for 4th offense DUIs.

I also carried SB 334, which established the driver rehabilitation and improvement program that HB 197 seeks to eliminate. SB 334 passed this Judiciary Committee unanimously, passed the Senate 46-1, was concurred in by the House Judiciary Committee 15-3, and the House, 63-37. Envisioned in SB 334 was a private sector response to a problem that the state had been unable to deal with. While 61-3-302, MCA, was first enacted in 1977 as an agency driver rehab program, and amended several times thereafter, it had never been seriously implemented. Senate Judiciary Committee meeting minutes from the hearing last session note that the person representing the Dept. of Justice on the bill testified that in his opinion the previous efforts by the agency had been a waste of time and money. The department's interest in SB 334 was to be able to monitor any private programs that were established under the bill, in order to assure quality. That was reasonable. For this, they requested an FTE, and were funded an FTE in HB 2. I should note that the only General Fund money needed was some start up costs, including developing rules and procedures, and that the program would be self-funded through fees from participants after start up.

I got several letters of support for SB 334 from Justices of the Peace, City Court Justices, and a District Court Judge. In fact, some 35 of these justices utilized the Rocky Mountain Traffic School at that time. Wrote one, Judge Robert Brown of Belgrade, "I believe I have yet to see a reoffender" (after completing the program). Testifying in support at the Senate Hearing were several law enforcement officers from around the state.

The concept for SB 334 was brought to me by Tony and Terry Steffens of the Rocky Mountain Traffic School, who I believe you'll hear from today at the hearing. Tony is a Livingston police officer and they were both constituents of mine. Here was a case of private citizens stepping forward through their legislator to provide a needed service that the government was not providing, a service at no cost (other than minimal start up costs), a service for habitual traffic offenders who needed to learn to take driving seriously. The Department of Justice in preparation of its fiscal note assumed it would take six months "to complete the rulemaking process, design the program, develop a procedure for certifying course providers, develop contract standards, develop standards to declare drivers in need of rehabilitation, [and] develop course standards and audit procedures." The Department further noted that the "FTE to support the program would be hired July 1, 2001 to develop the program; program implementation would be completed January

1, 2002." They estimated, and HB 2 contained, a General Fund cost for the first year only, at \$33,148. Note that development and implementation would take place largely before we became aware that we were facing significant budget shortfalls. To date, I think rules have been adopted, but to my knowledge no program is in place, and no FTE has been hired.

I hope you will ask the Department some pointed questions as to why they drag their feet in implementing this program, why they apparently do not trust the private sector to provide a straightforward service, what happened to the implementation money, and why they now want to get rid of the program in favor of doing it themselves (placing themselves in direct competition with the private sector). And if the answers are not very convincing, I hope you will kill the bill, or better yet, amend out of it the elimination of the private program and provide no nonsense guidance to the agency to get it implemented.

I have no idea whether the constituents that brought me this program are Republicans or Democrats-it didn't matter then and it doesn't matter now. What matters is the ability of citizens to bring forth good ideas, get them established as policy through the policy making body of the people, and then to have them responsibly implemented in a timely manner.

Those of you who know me, know that I'm slow to frustration and anger. But I have to say I am frustrated. I know this is a relatively small item in the context of the weighty issues before you this session. But it's not small to my (former) constituents, and it's not small to safer highways. And I would submit it's not small in the context of people's faith in their government institutions.

Thank you for your consideration. I hope you all, especially the new members, are enjoying the Senate Judiciary Committee. I know I always felt, and still do, that the twelve years spent on that committee provided one of the most educational and broadening experiences of my life.

Sincerely,
Lorents Grosfield
537-4489; lorents@mcn.net

**MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ATTENDANCE**

DATE 03.07.03

NAME	PRESENT	EXCUSED	ABSENT
SEN. BRENT CROMLEY	✓		
SEN. AUBYN CURTISS	✓		
SEN. JEFF MANGAN	✓		
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE	✓		
SEN. GARY PERRY	✓		
SEN. MIKE WHEAT	✓		
SEN. DAN MCGEE, VICE CHAIRMAN	✓		
SEN. DUANE GRIMES, CHAIRMAN	✓		

DATE march 7, 2003

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 171, HB 211, HB 197

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
John Connor	444-2026	DOJ - A.G.	171	X	
Doc Hargrove	920 2478	Gallatin County	211	X	
Greg Van Halbeek	2-0230	State Farm Ins. Co	HB 197	X	
Brenda Nordlund	444-2026	Dept of Justice	HB 197	X	
Craig Thomas	846-1404	BOP & P	HB 211	X	
Tony Steffins	686-4968	Rocky Mtn Traffic School	HB 197		X
DIANA KOCH	444-9593	DOC	HB 211	X	
Jim Smith	3-5269	MT. County Atty	HB 211 HB 171	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 24, 2003 at
10:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jerry O'Neil (R)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: Sen. Jeff Mangan (D)
Sen. Gerald Pease (D)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 340, HB 358, HB 389, 3/20/2003
Executive Action: HB 389, HB 197, HB 54 , HB 340

EXECUTIVE ACTION ON HB 197

Motion/Vote: SEN. MCGEE moved that the Committee **RECONSIDER ITS ACTION ON HB 197. The motion carried unanimously.**

Motion: SEN. MCGEE moved that **HB 197 BE CONCURRED IN.**

Discussion:

Ms. Lane provided a copy of an amendment, HB019701.avl, **EXHIBIT(jus62a04)**. She noted that she had worked on the amendment with **Brenda Nordlund, Department of Justice**. Instruction No. 2 provides a new section and Instruction No. 4 is a coordination instruction necessary to coordinate the bill with HB 215, HB 185, SB 13, and SB 37.

Ms. Nordlund explained the new section addressed the tension between the Rocky Mountain Traffic School proponents and the Department of Justice. This approach would strip the mandates, as originally proposed. The inclusion of the new section would recognize that individuals who complete a driver rehabilitation program that meets the requirements set forth in (2)(a)(b)(c) and (d), would receive a 50 percent discount on their license reinstatement fee. This is optional and would be an economic decision by an individual as to whether it would be more beneficial to participate in the program or pay the full license reinstatement fee of \$100. Senate Bill 37 and House Bill 618 could increase this fee from \$200 to \$500.

SEN. WHEAT asked for further clarification of Instruction No. 4 which was approximately a two and a half page amendment. **Ms. Lane** explained this was simply a coordination instruction.

{Tape: 2; Side: B}

Substitute Motion/Vote: SEN. WHEAT moved that **HB 197 BE AMENDED - HB019701.avl. The motion carried unanimously.**

Motion: SEN. O'NEIL moved that **HB 197 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. O'NEIL noted that on page 9, lines 20 and 21, the language stated the department could take away the vehicle owned and operated at the time of the offense by the person whose driver's license is suspended or revoked. He would still like to have this address the use of a borrowed car. If the person knows the

person has a DUI or a revoked license and the person loans his or her car with that knowledge, that car should also be taken away.

CHAIRMAN GRIMES suggested that the amendment be drafted for the floor.

Ms. Lane believed the amendment would be outside of the scope of the bill which deals with driver's licenses. The amendment would involve seizure and forfeiture of a vehicle.

CHAIRMAN GRIMES further suggested that SB 37 be reviewed following its passage by the House. The bill will be brought back to the Senate and probably will be in a conference committee. This would be a good place for the amendment to be placed on the bill.

Vote: The motion carried unanimously.

EXECUTIVE ACTION ON HB 54

Motion: **SEN. WHEAT** moved that **HB 54 BE CONCURRED IN.**

SEN. WHEAT recalled **REP. NEWMAN'S** primary concern was to include within the stalking statute any type of electronic communication by computers, video cameras, fax machines, etc. The Committee focused on electronic communication and tried to develop a definition so that all various means of communicating would need to be included in the bill.

Substitute Motion: **SEN. WHEAT** moved that **HB 54 AMENDED, HB005402.avl, EXHIBIT(jus62a05).**

SEN. WHEAT explained Instruction No. 13 of the amendment contained the definition: "(4) 'Electronic communication' means any transfer between persons of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system."

Ms. Lane added the definition was from the Federal Privacy in Communications Act.

SEN. WHEAT further noted all the amendments would refer to an electronic communication that would be defined elsewhere in the statute.

SEN. O'NEIL suggested simply changing line 17 on page 1 to read, "(b) harassing, threatening, or intimidating the stalked person, in person or by any other method of contacting the victim."

MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ATTENDANCE

DATE 3-24-03

NAME	PRESENT	EXCUSED	ABSENT
SEN. BRENT CROMLEY	✓		
SEN. AUBYN CURTISS	✓		
SEN. JEFF MANGAN		✓	
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE		✓	
SEN. GARY PERRY	✓		
SEN. MIKE WHEAT	✓		
SEN. DAN MCGEE, VICE CHAIRMAN	✓		
SEN. DUANE GRIMES, CHAIRMAN	✓		

Amendments to House Bill No. 197
3rd Reading Copy

Requested by Senator Duane Grimes

For the Senate Judiciary Committee

Prepared by Valencia Lane
March 21, 2003 (7:28am)

1. Title, line 18.

Following: " ; "

Insert: "PROVIDING FOR A DISCOUNT ON LICENSE REINSTATEMENT FEES
UPON COMPLETION OF A DRIVER REHABILITATION PROGRAM; "

2. Page 16, line 18.

Following: line 17

Insert: "NEW SECTION. Section 14. Discount on license
reinstatement fee -- completion of driver rehabilitation program.

(1) A person who submits a certificate of completion from a
department-approved driver rehabilitation program must receive a
50% reduction on the license reinstatement fee due under 61-2-107
or [section 1 of House Bill No. 215].

(2) For purposes of this section, a driver rehabilitation
program may be approved by the department if the program provider
annually certifies to the department that the provider's program:

(a) provides a participant with a minimum of 4 hours of
instruction on Montana driving laws, the importance of positive
driving attitudes and habits, defensive driving techniques, and
the responsible use of drugs and alcohol;

(b) includes preinstruction and postinstruction testing of
each participant;

(c) provides a certificate of completion to each person who
successfully completes the program; and

(d) reports to the department, in a timely manner, the
name, date of birth, and driver's license number of each person
to whom the provider has issued a certificate of completion."

Renumber: subsequent sections

3. Page 16, line 19.

Following: "INSTRUCTION."

Insert: "(1)"

SENATE JUDICIARY
Exhibit No. 4
Date 3-24-03
Bill No. HB197

4. Page 16, line 22.

Following: line 21

Insert: "(2) If House Bill No. 215 is not passed and approved,
then the bracketed language in [section 14(1) of this act]
is void.

(3) If House Bill No. 185 and [this act] are both
passed and approved, then subsection (4)(a) of 61-5-107 as
amended by [this act] must read as follows:

"(4) (a) When an application is received from an applicant who is not ineligible for licensure under 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from the previous licensing jurisdiction each jurisdiction in which the applicant was licensed in the preceding 10-year period. The driving record may be transmitted manually or by electronic medium. When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance."

(4) If Senate Bill No. 13 and [this act] are both passed and approved, then [section 1 of Senate Bill No. 13], amending 61-5-205, is void.

(5) If Senate Bill No. 37 and [this act] are both passed and approved, then subsection (3) of 61-5-205 in [this act] must read as follows:

"(3) Except as provided in 61-5-208(3)(c), a revocation under subsection (1) of this section must be for a period of 1 year."

(6) If Senate Bill No. 37 and [this act] are both passed and approved, then 61-5-208 must read as follows:

Insert: "Section 4. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation -- probationary license -- ignition interlock device required on second or subsequent offense. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b)(3) When If the department receives a report from a court or another licensing jurisdiction that a person is has been convicted or forfeits has forfeited bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall upon receiving a report of conviction or forfeiture of bail or collateral not vacated,;

(a) upon a first conviction, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year and, upon Upon issuance of any restricted probationary license during the period of revocation suspension, the department shall restrict the person to driving only a motor vehicle equipped with

a functioning ignition interlock device;

(i) if the report shows that the person's alcohol concentration at the time of arrest was 0.16 or greater; or

(ii) if ordered by the court when the person's alcohol concentration at the time of arrest was less than 0.16.

(b) upon a second or third conviction for an offense within 5 years of the first offense, suspend the license or driving privilege of the person for a period of 1 year and, upon reinstatement of the person's driving privileges, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the 12-month period beginning with the end of the period of the driver's license suspension. A restricted probationary license may not be issued during the 1-year period of suspension.

(c) upon a fourth or subsequent conviction constituting a felony under 61-8-731, revoke the license or driving privilege of the person for a period of 5 years. A restricted probationary license may not be issued during the first 2 years of the revocation period. If the person's probation officer agrees, the person's driving privileges may be reinstated for the last 3 years of the revocation period, and the person must be restricted to driving only a motor vehicle equipped with a functioning ignition interlock device during the remainder of the revocation period.

(4) If the 1-year period of revocation under subsection (3)(b) or (3)(c) passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both, are completed.

(5) For the purposes of subsection (2)(b) (3), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

(3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.

(b) (6) If When an ignition interlock restriction is imposed under subsection (3) and the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to such acts as operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension suspend the person's license or driving privilege for the remainder of the time restriction period. The department may not issue a restricted probationary

driver's license to a person whose license ~~suspension~~ has been reinstated suspended because of violation of an ignition interlock restriction.

~~(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).~~

~~(5)(7) (a) The Except as provided in subsection (7)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.~~

~~(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.~~

~~(6)(8) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."~~

- END -

Ex 4



SENATE STANDING COMMITTEE REPORT

March 24, 2003

Page 1 of 4

Mr. President:

We, your committee on Judiciary recommend that House Bill 197 (third reading copy - blue) be concurred in as amended.

Signed:

Senator Duane Grimes, Chair

To be carried by Senator Duane Grimes

And, that such amendments read:

1. Title, line 18.

Following: "; "

Insert: "PROVIDING FOR A DISCOUNT ON LICENSE REINSTATEMENT FEES UPON COMPLETION OF A DRIVER REHABILITATION PROGRAM; "

2. Page 16, line 18.

Following: line 17

Insert: "NEW SECTION. Section 14. Discount on license reinstatement fee -- completion of driver rehabilitation program.

(1) A person who submits a certificate of completion from a department-approved driver rehabilitation program must receive a 50% reduction on the license reinstatement fee due under 61-2-107 or [section 1 of House Bill No. 215].

(2) For purposes of this section, a driver rehabilitation program may be approved by the department if the program provider annually certifies to the department that the provider's program:

(a) provides a participant with a minimum of 4 hours of instruction on Montana driving laws, the importance of positive driving attitudes and habits, defensive driving techniques, and the responsible use of drugs and alcohol;

(b) includes preinstruction and postinstruction testing of each participant;

(c) provides a certificate of completion to each person who successfully completes the program; and

(d) reports to the department, in a timely manner, the

Committee Vote:

Yes 6, No 0.

621409SC.sjo

50

name, date of birth, and driver's license number of each person to whom the provider has issued a certificate of completion."

Renumber: subsequent sections

3. Page 16, line 19.

Following: "INSTRUCTION."

Insert: "(1)"

4. Page 16, line 22.

Following: line 21

Insert: "(2) If House Bill No. 215 is not passed and approved, then the bracketed language in [section 14(1) of this act] is void.

(3) If House Bill No. 185 and [this act] are both passed and approved, then subsection (4)(a) of 61-5-107 as amended by [this act] must read as follows:

"(4) (a) When an application is received from an applicant who is not ineligible for licensure under 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from the previous licensing jurisdiction each jurisdiction in which the applicant was licensed in the preceding 10-year period. The driving record may be transmitted manually or by electronic medium. When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance."

(4) If Senate Bill No. 13 and [this act] are both passed and approved, then [section 1 of Senate Bill No. 13], amending 61-5-205, is void.

(5) If Senate Bill No. 37 and [this act] are both passed and approved, then subsection (3) of 61-5-205 in [this act] must read as follows:

"(3) Except as provided in 61-5-208(3)(c), a revocation under subsection (1) of this section must be for a period of 1 year."

(6) If Senate Bill No. 37 and [this act] are both passed and approved, then 61-5-208 must read as follows:

Insert: "Section 4. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation -- probationary license -- ignition interlock device required on ~~second or subsequent offense~~. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways ~~for a period of more than 1 year~~, except as otherwise permitted by law.

(2) ~~(a)~~ Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public

highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b)(3) When If the department receives a report from a court or another licensing jurisdiction that a person is has been convicted or forfeits has forfeited bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated,:

(a) upon a first conviction, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year and, upon Upon issuance of any restricted probationary license during the period of revocation suspension, the department shall restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device;

(i) if the report shows that the person's alcohol concentration at the time of arrest was 0.16 or greater; or

(ii) if ordered by the court when the person's alcohol concentration at the time of arrest was less than 0.16.

(b) upon a second or third conviction for an offense within 5 years of the first offense, suspend the license or driving privilege of the person for a period of 1 year and, upon reinstatement of the person's driving privileges, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the 12-month period beginning with the end of the period of the driver's license suspension. A restricted probationary license may not be issued during the 1-year period of suspension.

(c) upon a fourth or subsequent conviction constituting a felony under 61-8-731, revoke the license or driving privilege of the person for a period of 5 years. A restricted probationary license may not be issued during the first 2 years of the revocation period. If the person's probation officer agrees, the person's driving privileges may be reinstated for the last 3 years of the revocation period, and the person must be restricted to driving only a motor vehicle equipped with a functioning ignition interlock device during the remainder of the revocation period.

(4) If the 1-year period of revocation under subsection (3)(b) or (3)(c) passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both, are completed.

~~(c)(5)~~ For the purposes of subsection ~~(2)(b)~~ (3), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

~~(3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.~~

~~(b)(6) If~~ When an ignition interlock restriction is imposed under subsection (3) and the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to such acts as operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension suspend the person's license or driving privilege for the remainder of the time restriction period. The department may not issue a restricted probationary driver's license to a person whose license suspension has been reinstated suspended because of violation of an ignition interlock restriction.

~~(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).~~

~~(5)(7) (a) The~~ Except as provided in subsection (7)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

~~(6)(8) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."~~

- END -

FISCAL NOTE

Bill #: HB0197

Title: Revise driver license laws

Primary Sponsor: Becker, A

Status: As Amended in Senate Committee

Arlene Becker
Sponsor signature Date

Chuck Swysgood 4/4/03
Chuck Swysgood, Budget Director Date

Fiscal Summary

	<u>FY 2004 Difference</u>	<u>FY 2005 Difference</u>
Expenditures:		
General Fund	\$0	\$0
Revenue:		
General Fund	\$0	\$0
Net Impact on General Fund Balance:	\$0	\$0

- | | |
|---|--|
| ☐ Significant Local Gov. Impact | ☐ Technical Concerns |
| ☐ Included in the Executive Budget | ☐ Significant Long-Term Impacts |
| ☐ Dedicated Revenue Form Attached | ☐ Needs to be included in HB 2 |

Fiscal Analysis

ASSUMPTIONS:

1. This bill clarifies certain DUI/BAC driver control actions, converts certain driver license revocations to suspensions, and provides a driver license reinstatement fee discount of 50 percent for individuals who submit a certificate of completion from an approved driver rehabilitation program.
2. Due to the cost of the private sector driver rehabilitation program, it is unknown the number of individuals who would participate in the program and qualify for a 50 percent driver license reinstatement fee discount. Participation in the driver rehabilitation program would be directly related to cost savings an individual would realize from completion of the program compared to the cost of the non-discounted reinstatement fee. The driver rehabilitation programs provided by the private sector would need to charge fees less than the savings available as the 50 percent reinstatement fee discount. The state general fund would be decreased by 50 percent of the reinstatement fee discounted for each qualifying individual.
3. Administrative costs for implementation of procedures including the application of the reinstatement fee discounts are minimal and would be absorbed within the department's budget.

1 HOUSE BILL NO. 197

2 INTRODUCED BY BECKER

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO REVOCATIONS,
6 SUSPENSIONS, AND RECORDKEEPING OF DRIVER'S LICENSES; REMOVING THE REQUIREMENT THAT
7 THE DEPARTMENT OF JUSTICE ESTABLISH BY ADMINISTRATIVE RULE A DRIVER REHABILITATION
8 AND IMPROVEMENT PROGRAM THAT INCLUDES A REQUIREMENT TO CONTRACT WITH PRIVATE
9 ENTITIES FOR THE OPERATION OF PROGRAM COURSES; CLARIFYING THE REQUIREMENTS FOR
10 OBTAINING AND USING A DRIVING RECORD FROM ANOTHER JURISDICTION FOR A PERSON APPLYING
11 FOR A MONTANA DRIVER'S LICENSE; REVISING REQUIREMENTS FOR THE SUSPENSION AND
12 REVOCATION OF A DRIVER'S LICENSE FOR CONVICTIONS OF CERTAIN OFFENSES AND BREATH
13 TESTING REFUSALS; REVISING AUTHORITY TO IMPOSE A DISCRETIONARY LICENSE SUSPENSION;
14 REVISING THE REQUIREMENT FOR SUSPENDING A LICENSE FOR A CONVICTION OF DRIVING WHILE
15 A LICENSE IS SUSPENDED OR REVOKED; REMOVING THE REQUIREMENT THAT THE DEPARTMENT
16 SUSPEND THE DRIVER'S LICENSE OF A PERSON WHO FAILS TO COMPLY WITH CERTAIN DRIVER
17 REHABILITATION AND IMPROVEMENT COURSE REQUIREMENTS; REMOVING THE DEFINITION OF

1'

**THERE ARE NO CHANGES IN THIS BILL AND
IT WILL NOT BE REPRINTED. PLEASE REFER TO
2ND RD--2ND HOUSE COPY (TAN) FOR COMPLETE TEXT.**

HOUSE BILL NO. 197

INTRODUCED BY BECKER

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO REVOCATIONS, SUSPENSIONS, AND RECORDKEEPING OF DRIVER'S LICENSES; REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF JUSTICE ESTABLISH BY ADMINISTRATIVE RULE A DRIVER REHABILITATION AND IMPROVEMENT PROGRAM THAT INCLUDES A REQUIREMENT TO CONTRACT WITH PRIVATE ENTITIES FOR THE OPERATION OF PROGRAM COURSES; CLARIFYING THE REQUIREMENTS FOR OBTAINING AND USING A DRIVING RECORD FROM ANOTHER JURISDICTION FOR A PERSON APPLYING FOR A MONTANA DRIVER'S LICENSE; REVISING REQUIREMENTS FOR THE SUSPENSION AND REVOCATION OF A DRIVER'S LICENSE FOR CONVICTIONS OF CERTAIN OFFENSES AND BREATH TESTING REFUSALS; REVISING AUTHORITY TO IMPOSE A DISCRETIONARY LICENSE SUSPENSION; REVISING THE REQUIREMENT FOR SUSPENDING A LICENSE FOR A CONVICTION OF DRIVING WHILE A LICENSE IS SUSPENDED OR REVOKED; REMOVING THE REQUIREMENT THAT THE DEPARTMENT SUSPEND THE DRIVER'S LICENSE OF A PERSON WHO FAILS TO COMPLY WITH CERTAIN DRIVER REHABILITATION AND IMPROVEMENT COURSE REQUIREMENTS; REMOVING THE DEFINITION OF "DRIVER IN NEED OF REHABILITATION AND IMPROVEMENT"; PROVIDING FOR A DISCOUNT ON LICENSE REINSTATEMENT FEES UPON COMPLETION OF A DRIVER REHABILITATION PROGRAM; AMENDING SECTIONS 61-2-302, 61-5-107, 61-5-205, 61-5-206, 61-5-208, 61-5-212, 61-7-103, 61-8-402, 61-8-409, 61-8-734, 61-11-203, 61-11-204, AND 61-13-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-2-302, MCA, is amended to read:

"61-2-302. Establishment of driver rehabilitation and improvement program -- department to contract with private entities-- participation by offending drivers. (1) ~~(a)~~ The department ~~shall~~ may establish by administrative rules a driver rehabilitation and improvement program or programs, ~~that~~ The programs may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and

habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques and must include the requirements for obtaining a restricted probationary driver's license.

(b) ~~The rules must:~~

~~(i) provide for the local program courses to be operated by private entities;~~

~~(ii) develop a procedure for certifying private entities as driver rehabilitation and improvement course providers;~~

~~(iii) establish the criteria that private entities must meet in order to be certified by the department; and~~

~~(iv) provide for an alternative driver rehabilitation and improvement procedure for drivers who live in areas where a course is not offered.~~

(2) ~~Official participation in the driver rehabilitation and improvement program is limited to those persons whose license to operate a motor vehicle in the state of Montana~~ Except when otherwise provided or restricted by statute, a person whose driver's license is suspended or revoked by the department may participate in any driver rehabilitation and improvement program established under this section if the person's license is:

(a) ~~(i) subject to suspension or revocation~~ suspended as a result of a violation of the traffic laws of this state, unless the suspension was imposed under the authority provided in Title 61, chapter 8, part 8; or;

~~(ii) unless otherwise provided by the sentencing court, is suspended under 45-5-624(2)(b); or~~

(b) ~~revoked and they have~~ the person has:

~~(i) completed at least 3 months of a 1-year revocation or, if revocation is for a second or subsequent violation of 61-8-401 or 61-8-406, have provided the department with proof of compliance with the ignition interlock device restriction imposed under 61-5-208; or~~

~~(ii) completed 1 year of a 3-year revocation; and~~

~~(iii) met the requirements for reobtaining a Montana driver's license; or~~

~~(c) subject to suspension as provided in 61-11-204(3).~~

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver rehabilitation and improvement program and meets the eligibility requirements of subsection (2).

~~(4) In the event that~~ If a person's driver's license has been surrendered before the person's selection

1 for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt
2 of the person's agreement to participate in the program.

3 (5) The stay of enforcement of any suspension or revocation ~~order~~ action must be terminated and the
4 ~~order of~~ suspension or revocation ~~enforced~~ action must be reinstated if a person declines to participate in the
5 driver rehabilitation and improvement program or fails to meet the attendance or other requirements established
6 for participation in the program.

7 (6) This part does not create a right to be included in any program established under this part.

8 ~~(7) The department and the entity with which the department contracts under subsection (1)(b) shall~~
9 ~~establish separate fee schedules that may be charged to those persons participating in the driver improvement~~
10 ~~and rehabilitation program. The fees must be collected separately by the department and by the entity with which~~
11 ~~the department contracts under subsection (1)(b).~~

12 ~~—— (8) The fees collected by the department under subsection (7) must be used to help defray costs~~
13 ~~incurred by the department in administering the program and in contracting with private entities as provided in~~
14 ~~subsection (1). The department may not use the fees collected under subsection (7) for any other purpose.~~

15 (7) The department may establish a schedule of fees that may be charged to those persons participating
16 in the driver improvement and rehabilitation program. The fees must be used to help defray costs of maintaining
17 the program.

18 ~~(9)(8)~~ A person may be referred to this program by a driver improvement analyst, city judge, justice of
19 the peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

20 ~~(10)(9)~~ (a) Except as provided in ~~(10)(b)~~ subsection (9)(b), the department may issue a restricted
21 probationary license to any person who enrolls and participates in the driver rehabilitation and improvement
22 program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions
23 set forth on the license.

24 (b) The department may not issue a restricted probationary license that would permit an individual to
25 drive a commercial motor vehicle during a period in which:

26 (i) the individual is disqualified from operating a commercial motor vehicle under state or federal law;
27 or

28 (ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

29 ~~(11)(10)~~ It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the
30 restrictions imposed on a restricted license issued to the person under this section."

1
2 **Section 2.** Section 61-5-107, MCA, is amended to read:

3 **"61-5-107. Application for license, instruction permit, or motorcycle endorsement.** (1) Each
4 application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form
5 furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee
6 entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from
7 the date of application. A voter registration form for mail registration as prescribed by the secretary of state must
8 be attached to each driver's license application. If the applicant wishes to register to vote, the department shall
9 accept the registration and forward the form to the election administrator.

10 (2) Each application must include the full legal name, date of birth, sex, residence address of the
11 applicant [and the applicant's social security number], must include a brief description of the applicant, and must
12 include a statement that allows the department to determine if:

13 (a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so,
14 when and by what state or country;

15 (b) any commercial driver's license has ever been suspended or revoked;

16 (c) an application has ever been denied and, if so, the date of and reason for suspension, revocation,
17 or denial;

18 (d) the applicant has a physical or mental disability, limitation, or condition that impairs or may impair
19 the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the
20 highway; and

21 (e) the applicant relies upon, or intends to rely upon, any adaptive equipment or operational restrictions
22 to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the
23 highway, including the nature of the equipment or restrictions.

24 [(3) The department shall keep the applicant's social security number from this source confidential,
25 except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise
26 permitted by state law administered by the department and may be provided to the department of public health
27 and human services for use in administering Title IV-D of the Social Security Act.]

28 (4) (a) When an application is received from an applicant who is not ineligible for licensure under
29 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the
30 applicant's driving record from the previous licensing jurisdiction. The driving record may be transmitted manually

or by electronic medium. ~~When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.~~

(b) When received, the driving records must be appended to the driver's record created and maintained in this state. The department may rely on information contained in driving records received under this section to determine the appropriate action to be taken against the applicant upon subsequent receipt of a report of a conviction or other conduct requiring suspension or revocation of a driver's license under state law. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

Section 3. Section 61-5-205, MCA, is amended to read:

"61-5-205. Mandatory revocation or suspension of license upon ~~proper authority~~ certain convictions -- duration of action -- exceptions. (1) ~~The department upon proper authority shall revoke the an individual's driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for any of the following offenses, when the conviction or forfeiture has become final or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:~~

(a) negligent homicide resulting from the operation of a motor vehicle;

~~(b) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more;~~

~~(c)~~(b) any felony in the commission of which a motor vehicle is used;

~~(d)~~(c) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

~~(e)~~(d) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles; or

~~(f) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; or~~

~~(g)~~(e) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) ~~The department upon proper authority shall suspend the driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for~~ The department shall suspend an individual's driver's license or driving privilege if the department receives notice from a court

1 or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

2 (a) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol
3 or drugs or operating a motor vehicle with a blood alcohol concentration of 0.10 or more;

4 (b) three reckless driving offenses committed within a period of 12 months; or

5 (c) a theft offense under 45-6-301 ~~when the conviction or forfeiture has become final~~ if the theft
6 consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense. The
7 suspension must be for 30 days for a first offense, 6 months for a second offense, and 1 year for a third or
8 subsequent offense.

9 (3) A revocation under subsection (1) must be for a period of 1 year.

10 (4) (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection (2) must be
11 for a period of 1 year.

12 (b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208(2)(b).

13 (c) A suspension under subsection (2)(c) must be for one of the following periods:

14 (i) 30 days for a first offense;

15 (ii) 6 months for a second offense; and

16 (iii) 1 year for a third or subsequent offense."

17

18 **Section 4.** Section 61-5-206, MCA, is amended to read:

19 **"61-5-206. Authority of department to suspend license or driving privilege or issue probationary**

20 **license.** (1) The department may suspend the driver's license or driving privilege of a driver without preliminary
21 hearing upon a showing by its records or other sufficient evidence that the licensee:

22 ~~(a) has been involved as a driver in any accident resulting in the death or personal injury of another or~~
23 ~~serious property damage;~~

24 ~~—— (b) has been convicted with such frequency of serious offenses against traffic regulations governing~~
25 ~~the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other~~
26 ~~persons on the highways;~~

27 ~~—— (c) is a habitually reckless or negligent driver of a motor vehicle;~~

28 ~~—— (d) is incompetent to drive a motor vehicle;~~

29 ~~(e)~~(a) has committed or permitted an unlawful or fraudulent use of the license as specified in 61-5-302;

30 ~~(f) has committed an offense in another state that if committed in this state would be grounds for~~

1 ~~suspension or revocation;~~

2 ~~(g)(b)~~ has falsified the licensee's date of birth on the application for a driver's license;

3 ~~(h)(c)~~ is under 21 years of age and has altered the licensee's or another's driver's license or
4 identification card to obtain alcohol; or

5 ~~(i)(d)~~ has authorized another to use the licensee's driver's license or identification card to obtain alcohol;

6 or

7 ~~—— (j) has been declared a driver in need of rehabilitation and improvement, as defined in 61-11-203, and~~
8 ~~has failed to enroll in or successfully complete, within 90 days of notice, a driver rehabilitation and improvement~~
9 ~~course or other appropriate course determined by the department as provided in 61-11-204.~~

10 (2) However, the department may, in lieu of suspending the license or driving privilege, issue a
11 probationary license to a driver, without preliminary hearing, upon a showing by its records or other sufficient
12 evidence that the licensee's driving record would authorize suspension as provided in subsection (1). Upon
13 issuance of a probationary license, the licensee is subject to the restrictions set forth in the probationary license.
14 The licensee's driving privilege may be suspended upon conviction or forfeiture of bail not vacated of any traffic
15 violation during the period of probation. The licensee shall surrender to the department all driver's licenses that
16 have been issued to the licensee before the probationary license may be issued. The licensee's refusal or
17 neglect to surrender the licenses upon demand is grounds for suspending all licenses. Probationary licenses
18 may be issued for a period not to exceed 12 months.

19 (3) Upon suspending the license of any person or upon placing the person on probation, as authorized
20 in this section, the department shall immediately notify the licensee in writing and upon the licensee's request
21 shall afford the licensee an opportunity for a hearing as early as practical, within 20 days after receipt of the
22 request, in the county in which the licensee resides unless the department and the licensee agree that the
23 hearing may be held in some other county. At the hearing, the department through its authorized agent may
24 administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books
25 and papers and may require a reexamination of the licensee. At the hearing, the department shall either rescind
26 its order of suspension or probation or, for good cause, may affirm, reduce, or extend the period of probation
27 or suspension of the license."
28

29 **Section 5.** Section 61-5-208, MCA, is amended to read:

30 **"61-5-208. Period of suspension or revocation -- probationary license -- ignition interlock device**

1 **required on second or subsequent offense.** (1) The department may not suspend or revoke a driver's license
2 or privilege to drive a motor vehicle on the public highways ~~for a period of more than 1 year~~, except as otherwise
3 permitted by law.

4 (2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on
5 the public highways has been suspended or revoked may not have the license, endorsement, or privilege
6 renewed or restored until the revocation or suspension period has been completed.

7 (b) When a person is convicted or forfeits bail or collateral not vacated for the offense of operating or
8 being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a
9 combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol
10 concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or
11 collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months.
12 Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense
13 within 5 years of the first offense, the department shall ~~revoke~~ suspend the license or driving privilege of the
14 person for a period of 1 year and, upon issuance of any restricted probationary license during the period of
15 ~~revocation~~ suspension, restrict the person to driving only a motor vehicle equipped with a functioning ignition
16 interlock device. If the 1-year period passes and the person has not completed a chemical dependency
17 education course, treatment, or both, as ordered by the sentencing court, the license ~~revocation~~ suspension
18 remains in effect until the course, treatment, or both, are completed.

19 (c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third,
20 or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior
21 conviction and the date of the offense that resulted in the most recent conviction.

22 (3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof
23 of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license
24 suspension of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's
25 driver's license. The stay must remain in effect until the period of suspension has expired and any required
26 chemical dependency education course, treatment, or both, have been completed.

27 (b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the
28 person has violated the court-imposed ignition interlock restriction by, including but not limited to operating a
29 motor vehicle not equipped with the device, tampering with the device, or removing the device before the period
30 of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder

of the time period. The department may not issue a probationary driver's license to a person whose license suspension has been reinstated because of violation of an ignition interlock restriction.

~~(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).~~

~~(5)(4)~~ (a) The Except as provided in subsection (4)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

~~(6)(5)~~ If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

Section 6. Section 61-5-212, MCA, is amended to read:

"61-5-212. Driving while license suspended or revoked -- penalty -- seizure of vehicle or rendering vehicle inoperable. (1) A person who drives a motor vehicle or commercial motor vehicle on any public highway of this state at a time when the person's privilege to do so is suspended or revoked in this state or any other state is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than \$500.

(2) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the person's driver's license was suspended or revoked shall extend the period of suspension or revocation for an additional ~~like~~ 1-year period.

(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended ~~or revoked~~ for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3).

1 unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner
2 who is determined to be without fault.

3 (6) A court may not suspend or defer imposition of penalties provided by this section."
4

5 **Section 7.** Section 61-7-103, MCA, is amended to read:

6 **"61-7-103. Accidents involving death or personal injuries.** (1) The driver of any vehicle involved in
7 an accident resulting in injury to or death of any person shall immediately stop ~~such the~~ vehicle at the scene of
8 ~~such the~~ accident or as close ~~thereto~~ to the accident as possible; but shall then ~~forthwith~~ return to and in every
9 event ~~shall~~ remain at the scene of the accident until ~~he~~ the driver has fulfilled the requirements of 61-7-105.
10 ~~Every such stop shall~~ Each stop at the scene of the accident must be made without obstructing traffic more than
11 is necessary.

12 (2) ~~Any person~~ A driver failing to stop or to comply with ~~said the~~ requirements ~~under such circumstances~~
13 of subsection (1) shall upon conviction be punished by imprisonment for not less than 30 days or more than 1
14 year, ~~or~~ by a fine of not less than \$100 or more than \$5,000, ~~or by both such~~ fine and imprisonment.

15 (3) The department shall revoke the license or permit to drive of any resident and any nonresident
16 operating privilege of ~~any a~~ person ~~so~~ convicted of violating this section for the period prescribed in ~~61-5-208~~
17 61-5-205."
18

19 **Section 8.** Section 61-8-402, MCA, is amended to read:

20 **"61-8-402. Blood or breath tests for alcohol, drugs, or both.** (1) A person who operates or is in
21 actual physical control of a vehicle upon ways of this state open to the public is considered to have given
22 consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount
23 or detected presence of alcohol or drugs in the person's body.

24 (2) (a) The test or tests must be administered at the direction of a peace officer when:

25 (i) the officer has reasonable grounds to believe that the person has been driving or has been in actual
26 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol,
27 drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

28 (ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

29 (iii) the officer has probable cause to believe that the person was driving or in actual physical control of
30 a vehicle in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision

1 resulting in property damage, bodily injury, or death.

2 (b) The arresting or investigating officer may designate which test or tests are administered.

3 (3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of
4 refusal is considered not to have withdrawn the consent provided by subsection (1).

5 (4) If an arrested person refuses to submit to one or more tests requested and designated by the officer
6 as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the
7 department, immediately seize the person's driver's license. The peace officer shall immediately forward the
8 license to the department, along with a report certified under penalty of law stating which of the conditions set
9 forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to
10 submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the
11 department shall suspend the license for the period provided in subsection (6).

12 (5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a
13 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of
14 issuance, and shall provide the driver with written notice of the license suspension ~~or revocation~~ and the right
15 to a hearing provided in 61-8-403.

16 (6) The following suspension ~~and revocation~~ periods are applicable upon refusal to submit to one or
17 more tests:

18 (a) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

19 (b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the
20 records of the department, a ~~revocation~~ suspension of 1 year with no provision for a restricted probationary
21 license.

22 (7) A nonresident driver's license seized under this section must be sent by the department to the
23 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or
24 more tests.

25 (8) The department may recognize the seizure of a license of a tribal member by a peace officer acting
26 under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating
27 a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation
28 requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred
29 within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department
30 under this subsection is not reviewable under 61-8-403.

1 (9) A suspension under this section is subject to review as provided in this part.

2 (10) This section does not apply to blood and breath tests, samples, and analyses used for purposes
3 of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an
4 offense not in this part."

5
6 **Section 9.** Section 61-8-409, MCA, is amended to read:

7 **"61-8-409. Preliminary alcohol screening test.** (1) A person who operates or is in actual physical
8 control of a vehicle upon ways of this state open to the public is considered to have given consent to a
9 preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol
10 concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving
11 or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of
12 alcohol or in violation of 61-8-410.

13 (2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting
14 to a preliminary alcohol screening test pursuant to this section.

15 (3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit
16 to the preliminary alcohol screening test will result in the suspension ~~or revocation~~ for up to 1 year of that
17 person's driver's license.

18 (4) If the person refuses to submit to a test under this section, a test will not be given. However, the
19 refusal is sufficient cause to suspend ~~or revoke~~ the person's driver's license as provided in 61-8-402.

20 (5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited
21 to determining whether a peace officer had a particularized suspicion that the person was driving or in actual
22 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or
23 in violation of 61-8-410 and whether the person refused to submit to the test.

24 (6) The provisions of 61-8-402 (3) through (8) that do not conflict with this section are applicable to
25 refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same
26 incident, the department may not consider each a separate refusal for purposes of suspension ~~or revocation~~
27 under 61-8-402.

28 (7) A test may not be conducted or requested under this section unless both the peace officer and the
29 instrument used to conduct the preliminary alcohol screening test have been certified by the department
30 pursuant to rules adopted under the authority of 61-8-405(5)."

1
2 **Section 10.** Section 61-8-734, MCA, is amended to read:

3 **"61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
4 **concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of**
5 **sentence not allowed.** (1) (a) For the purpose of determining the number of convictions under 61-8-714 or
6 61-8-722 for a violation of 61-8-401 or 61-8-406, "conviction" means a final conviction, as defined in 45-2-101,
7 in this state; conviction for a violation of a similar statute or regulation in another state, or a federally recognized
8 Indian reservation; or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court
9 in this state, another state, or a federally recognized Indian reservation, which forfeiture has not been vacated.

10 (b) An offender is considered to have been previously convicted for the purposes of sentencing if less
11 than 5 years have elapsed between the commission of the present offense and a previous conviction, unless
12 the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used
13 for sentencing purposes.

14 (c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be
15 counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or
16 61-8-406.

17 (2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under
18 61-8-714 or 61-8-722 be served in another facility made available by the county and approved by the sentencing
19 court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may
20 impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant
21 follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease
22 center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the
23 sentencing court.

24 (3) Subject to the limitations set forth in 61-8-714 and 61-8-722 concerning minimum periods of
25 imprisonment, the court may order that a term of imprisonment imposed under either section be served by
26 imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

27 (4) A court may not defer imposition of sentence under 61-8-714, 61-8-722, or 61-8-731.

28 (5) The provisions of 61-2-107, 61-2-302, 61-5-205(1)(b)(2), and 61-5-208(2), relating to suspension
29 and revocation of driver's licenses and later reinstatement of driving privileges, apply to any conviction under
30 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406."

Section 11. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty or nolo contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle that is prohibited by law, ordinance, or administrative order.

~~(2) "Driver in need of rehabilitation and improvement" means a person who within a 2-year period accumulates 18 or more conviction points according to the schedule specified in subsection (3).~~

~~(3)~~(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;

(k) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not apply to

1 operating a motor vehicle within a period of 180 days from the date the license expired);

2 (l) speeding, except as provided in 61-8-725(2), 3 points;

3 (m) all other moving violations, 2 points.

4 ~~(4)~~(3) There may not be multiple application of cumulative points when two or more charges are filed
5 involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number
6 of points for the specific conviction carrying the highest points is chargeable against that defendant.

7 ~~(5)~~(4) "License" means any type of license or permit to operate a motor vehicle.

8 ~~(6)~~(5) "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by
9 a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway, as the
10 term is defined in 61-1-201.

11 ~~(7)~~(6) A traffic regulation includes any provision governing motor vehicle operation, equipment, safety,
12 size, weight, and load restrictions or driver licensing. A traffic regulation does not include provisions governing
13 vehicle registration or local parking."
14

15 **Section 12.** Section 61-11-204, MCA, is amended to read:

16 **"61-11-204. Department's duties.** (1) If the records maintained by the department show that a person's
17 driving record brings the person within the definition of a habitual traffic offender, the department shall:

18 (a) declare the person a habitual traffic offender;

19 (b) revoke the person's driver's license or driving privileges as provided in 61-11-211; and

20 (c) notify the person in writing of the declaration and revocation.

21 (2) The notice must be sent by first-class mail to the most current address on record with the
22 department. The notice must include a certified reproduction of the person's driving record as contained in the
23 computer storage device used by the department for recordkeeping. The notice must inform the person of the
24 right under 61-11-210 to appeal the declaration and revocation. Service of the notice is complete upon mailing.

25 ~~(3) If the records maintained by the department show that a person's driving record brings the person~~
26 ~~within the definition of a driver in need of rehabilitation and improvement, the department shall:~~

27 ~~— (a) declare the person a driver in need of rehabilitation and improvement;~~

28 ~~— (b) notify the person that unless the person enrolls in and successfully completes, within 90 days of~~
29 ~~notification, a certified driver rehabilitation and improvement course, as provided in 61-2-302, the person's~~
30 ~~driver's license will be suspended for a period not to exceed 6 months or until the person has successfully~~

1 ~~completed the course, whichever occurs first;~~

2 ~~—— (c) provide the person with a list of certified driver rehabilitation and improvement courses and~~
3 ~~information about how the person may comply with the provisions of this subsection (3) if a driver rehabilitation~~
4 ~~and improvement program does not exist near the person's residence; and~~

5 ~~—— (d) send the notice as provided in subsection (2).~~

6 ~~—— (4) If the person fails to enroll in a certified driver rehabilitation and improvement program or fails to~~
7 ~~successfully complete the program or an appropriate substitute within 90 days, the department may suspend~~
8 ~~the person's driver's license as provided in 61-5-206 for a period not to exceed 6 months or until the person has~~
9 ~~successfully completed the course, whichever occurs first."~~

11 **Section 13.** Section 61-13-104, MCA, is amended to read:

12 **"61-13-104. Penalty -- no record permitted.** (1) A driver who violates 61-13-103 shall be fined \$20,
13 but the violation is not a misdemeanor pursuant to 45-2-101, 46-18-236, 61-8-104, or 61-8-711. A violation of
14 61-13-103 may not be counted as a moving violation for purposes of suspending a driver's license under
15 61-11-203(3)(m)(2)(m). Bond for this offense is \$20, and a jail sentence may not be imposed.

16 (2) A violation of 61-13-103 may not be recorded or charged against the driver's record of a person
17 violating 61-13-103.

18 (3) An insurance company may not hold a violation of 61-13-103 against the insured or increase the
19 insured's premiums due to a violation of 61-13-103."

21 **NEW SECTION. SECTION 14. DISCOUNT ON LICENSE REINSTATEMENT FEE -- COMPLETION OF DRIVER**
22 **REHABILITATION PROGRAM.** (1) A PERSON WHO SUBMITS A CERTIFICATE OF COMPLETION FROM A DEPARTMENT-APPROVED
23 DRIVER REHABILITATION PROGRAM MUST RECEIVE A 50% REDUCTION ON THE LICENSE REINSTATEMENT FEE DUE UNDER
24 61-2-107 OR [SECTION 1 OF HOUSE BILL NO. 215].

25 (2) FOR PURPOSES OF THIS SECTION, A DRIVER REHABILITATION PROGRAM MAY BE APPROVED BY THE
26 DEPARTMENT IF THE PROGRAM PROVIDER ANNUALLY CERTIFIES TO THE DEPARTMENT THAT THE PROVIDER'S PROGRAM:

27 (A) PROVIDES A PARTICIPANT WITH A MINIMUM OF 4 HOURS OF INSTRUCTION ON MONTANA DRIVING LAWS, THE
28 IMPORTANCE OF POSITIVE DRIVING ATTITUDES AND HABITS, DEFENSIVE DRIVING TECHNIQUES, AND THE RESPONSIBLE USE
29 OF DRUGS AND ALCOHOL;

30 (B) INCLUDES PREINSTRUCTION AND POSTINSTRUCTION TESTING OF EACH PARTICIPANT;

(C) PROVIDES A CERTIFICATE OF COMPLETION TO EACH PERSON WHO SUCCESSFULLY COMPLETES THE PROGRAM; AND

(D) REPORTS TO THE DEPARTMENT, IN A TIMELY MANNER, THE NAME, DATE OF BIRTH, AND DRIVER'S LICENSE NUMBER OF EACH PERSON TO WHOM THE PROVIDER HAS ISSUED A CERTIFICATE OF COMPLETION.

NEW SECTION. SECTION 15. COORDINATION INSTRUCTION. (1) IF A SENATE OR HOUSE BILL IS PASSED AND APPROVED THAT AMENDS 61-8-406(1)(A) BY SUBSTITUTING "0.08" FOR "0.10", THEN "0.08" IS SUBSTITUTED FOR "0.10" IN 61-5-205(2)(A) AS AMENDED BY [THIS ACT].

(2) IF HOUSE BILL NO. 215 IS NOT PASSED AND APPROVED, THEN THE BRACKETED LANGUAGE IN [SECTION 14(1) OF THIS ACT] IS VOID.

(3) IF HOUSE BILL NO. 185 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN SUBSECTION (4)(A) OF 61-5-107 AS AMENDED BY [THIS ACT] MUST READ AS FOLLOWS:

"(4) (a) When an application is received from an applicant who is not ineligible for licensure under 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from the previous licensing jurisdiction each jurisdiction in which the applicant was licensed in the preceding 10-year period. The driving record may be transmitted manually or by electronic medium. When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance."

(4) IF SENATE BILL NO. 13 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN [SECTION 1 OF SENATE BILL NO. 13], AMENDING 61-5-205, IS VOID.

(5) IF SENATE BILL NO. 37 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN SUBSECTION (3) OF 61-5-205 IN [THIS ACT] MUST READ AS FOLLOWS:

"(3) Except as provided in 61-5-208(3)(c), a revocation under subsection (1) of this section must be for a period of 1 year."

(6) IF SENATE BILL NO. 37 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN 61-5-208 MUST READ AS FOLLOWS:

"61-5-208. Period of suspension or revocation -- probationary license -- ignition interlock device required on second or subsequent offense. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) ~~(a)~~ Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

~~(b)(3) When~~ If the department receives a report from a court or another licensing jurisdiction that a person is ~~has been~~ convicted or ~~forfeits~~ has forfeited bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, ~~upon receiving a report of conviction or forfeiture of bail or collateral not vacated;~~

(a) upon a first conviction, suspend the driver's license or driving privilege of the person for a period of 6 months. ~~Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year and, upon~~ Upon issuance of any restricted probationary license during the period of ~~revocation~~ suspension, the department shall restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device;

(i) if the report shows that the person's alcohol concentration at the time of arrest was 0.16 or greater;

or

(ii) if ordered by the court when the person's alcohol concentration at the time of arrest was less than 0.16.

(b) upon a second or third conviction for an offense within 5 years of the first offense, suspend the license or driving privilege of the person for a period of 1 year and, upon reinstatement of the person's driving privileges, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the 12-month period beginning with the end of the period of the driver's license suspension. A restricted probationary license may not be issued during the 1-year period of suspension.

(c) upon a fourth or subsequent conviction constituting a felony under 61-8-731, revoke the license or driving privilege of the person for a period of 5 years. A restricted probationary license may not be issued during the first 2 years of the revocation period. If the person's probation officer agrees, the person's driving privileges may be reinstated for the last 3 years of the revocation period, and the person must be restricted to driving only a motor vehicle equipped with a functioning ignition interlock device during the remainder of the revocation period.

(4) If the ~~1-year~~ period of revocation under subsection (3)(b) or (3)(c) passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both, are completed.

~~(e)(5)~~ For the purposes of subsection ~~(2)(b)~~ (3), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

~~(3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.~~

~~(b)(6) If~~ When an ignition interlock restriction is imposed under subsection (3) and the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to such acts as operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension suspend the person's license or driving privilege for the remainder of the time restriction period. The department may not issue a restricted probationary ~~driver's~~ license to a person whose license ~~suspension~~ has been ~~reinstated~~ suspended because of violation of an ignition interlock restriction.

~~(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).~~

~~(5)(7) (a) The~~ Except as provided in subsection (7)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

~~(6)(8)~~ If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

NEW SECTION. Section 16. Effective date. [This act] is effective on passage and approval.

- END -

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION**

FREE CONFERENCE COMMITTEE ON SENATE AMENDMENTS TO HOUSE BILL 197

Call to Order: By **CHAIRMAN GARY L. PERRY**, on April 15, 2003 at
10:00 A.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. Gary L. Perry, Chairman (R)
Rep. Mark Noennig, Vice-Chairman (R)
Sen. Jeff Mangan (D)
Sen. Aubyn Curtiss (R)
Rep. Arlene Becker (D)

Members Excused: None.

Members Absent: Rep. Bill Thomas (R)

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 197, 4/11/2003
Executive Action:

REP. BECKER expressed her opposition to the Senate Amendments and indicated that the bill needed a coordination amendment.

Valencia Lane, Legislative Branch, explained the need for the coordination of HB 197 with HB 195. Ms. Lane provided the Committee with copies of the proposed amendments, attached as Exhibit 1. Ms. Lane discussed the amendments and how they related to the existing bill.

EXHIBIT(1)

REP. BECKER stated that she was okay with the proposed amendments.

REP. NOENNIG asked for an explanation of the difference between HB 195 and HB 197. Ms. Lane explained that there was no difference, the bills were being combined so that both bills would work.

Motion/Vote: REP. CURTISS moved that the AMENDMENT TO HB 197 BE ADOPTED. Motion carried 5-0 by voice vote.

Motion/Vote: REP. NOENNIG moved that the COMMITTEE REPORT ON HB 197 BE ADOPTED. Motion carried 5-0 by voice vote.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 8}



FREE CONFERENCE COMMITTEE

on House Bill 197

Report No. 1, April 15, 2003

Page 1 of 3

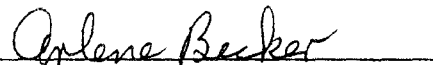
Mr. Speaker and Mr. President:

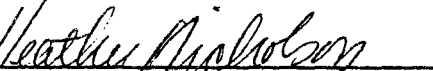
We, your Free Conference Committee met and considered **House Bill 197** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

For the House:


Rep. Mark Noennig Vice-Chair

Rep. Bill Thomas


Rep. Arlene Becker

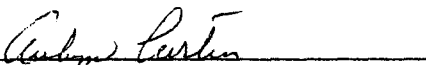

Amendment Coordinator


Chief Clerk of the House

For the Senate:


Sen. Gary Perry Chair


Sen. Jeff Mangan


Sen. Aubyn Curtiss

And, recommend that **House Bill 197** (reference copy -- salmon) be amended as follows:

1. Page 19, line 29.

Following: line 28

Insert: "(7) If House Bill No. 195 and [this act] are both passed and approved, then [section 1 of House Bill No. 195], amending 61-2-302, is void.

(8) If House Bill No. 195 and [this act] are both passed and approved and Senate Bill No. 37 is not passed and approved, then 61-5-208 must read as follows:

Insert: "Section 5. Section 61-5-208, MCA, is amended to read:

ADOPT

REJECT

Amendment # HB 197-1

FCCR #1

811122FC.hhn

"61-5-208. Period of suspension or revocation --
 probationary license -- ignition interlock device required
~~allowed on second or subsequent~~ first offense. (1) The department
 may not suspend or revoke a driver's license or privilege to
 drive a motor vehicle on the public highways ~~for a period of more~~
~~than 1 year~~, except as ~~otherwise~~ permitted by law.

(2) (a) Except as provided in 61-2-302, a person whose
 license or privilege to drive a motor vehicle on the public
 highways has been suspended or revoked may not have the license,
 endorsement, or privilege renewed or restored until the
 revocation or suspension period has been completed.

(b) When a person is convicted or forfeits bail or
 collateral not vacated for ~~the~~ a first offense of operating or
 being in actual physical control of a motor vehicle while under
 the influence of alcohol or any drug or a combination of alcohol
 or drugs or for ~~the~~ a first offense of operation of a motor
 vehicle by a person with alcohol concentration of 0.10 or more,
 the department shall, upon receiving a report of conviction or
 forfeiture of bail or collateral not vacated, suspend the
 driver's license or driving privilege of the person for a period
 of 6 months. Upon receiving a report of a conviction or
 forfeiture of bail or collateral for a second, third, or
 subsequent offense within 5 years of the first offense, the
 department shall ~~revoke~~ suspend the license or driving privilege
 of the person for a period of 1 year and, ~~upon issuance of any~~
~~restricted~~ may not issue a probationary license during the period
 of ~~revocation~~, ~~restrict the person to driving only a motor~~
~~vehicle equipped with a functioning ignition interlock device~~
suspension. If the 1-year suspension period passes and the person
 has not completed a chemical dependency education course,
 treatment, or both, as ordered by the sentencing court, the
 license ~~revocation~~ suspension remains in effect until the course,
 treatment, or both, are completed.

(c) For the purposes of subsection (2)(b), a person is
 considered to have committed a second, third, or subsequent
 offense if fewer than 5 years have passed between the date of an
 offense that resulted in a prior conviction and the date of the
 offense that resulted in the most recent conviction.

(3) (a) If ~~a~~ the person pays the reinstatement fee required
 in 61-2-107 and provides the department proof of compliance with
 an ignition interlock restriction imposed under 61-8-442, the
 department shall stay the license suspension of a person who has
 been convicted of a first violation of 61-8-401 or 61-8-406 and
 return the person's driver's license. The stay must remain in
 effect until the period of suspension has expired and any
 required chemical dependency education course, treatment, or
 both, have been completed.

(b) If the department receives notice from a court, peace
 officer, or ignition interlock vendor that the person has
 violated the court-imposed ignition interlock restriction by,
 including but not limited to operating a motor vehicle not
 equipped with the device, tampering with the device, or removing

the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension has been reinstated because of violation of an ignition interlock restriction.

~~(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).~~

~~(5)~~ (4) (a) The Except as provided in subsection (4) (b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

~~(6)~~ (5) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.""

- END -



AN ACT GENERALLY REVISING LAWS RELATING TO REVOCATIONS, SUSPENSIONS, AND RECORDKEEPING OF DRIVER'S LICENSES; REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF JUSTICE ESTABLISH BY ADMINISTRATIVE RULE A DRIVER REHABILITATION AND IMPROVEMENT PROGRAM THAT INCLUDES A REQUIREMENT TO CONTRACT WITH PRIVATE ENTITIES FOR THE OPERATION OF PROGRAM COURSES; CLARIFYING THE REQUIREMENTS FOR OBTAINING AND USING A DRIVING RECORD FROM ANOTHER JURISDICTION FOR A PERSON APPLYING FOR A MONTANA DRIVER'S LICENSE; REVISING REQUIREMENTS FOR THE SUSPENSION AND REVOCATION OF A DRIVER'S LICENSE FOR CONVICTIONS OF CERTAIN OFFENSES AND BREATH TESTING REFUSALS; REVISING AUTHORITY TO IMPOSE A DISCRETIONARY LICENSE SUSPENSION; REVISING THE REQUIREMENT FOR SUSPENDING A LICENSE FOR A CONVICTION OF DRIVING WHILE A LICENSE IS SUSPENDED OR REVOKED; REMOVING THE REQUIREMENT THAT THE DEPARTMENT SUSPEND THE DRIVER'S LICENSE OF A PERSON WHO FAILS TO COMPLY WITH CERTAIN DRIVER REHABILITATION AND IMPROVEMENT COURSE REQUIREMENTS; REMOVING THE DEFINITION OF "DRIVER IN NEED OF REHABILITATION AND IMPROVEMENT"; PROVIDING FOR A DISCOUNT ON LICENSE REINSTATEMENT FEES UPON COMPLETION OF A DRIVER REHABILITATION PROGRAM; AMENDING SECTIONS 61-2-302, 61-5-107, 61-5-205, 61-5-206, 61-5-208, 61-5-212, 61-7-103, 61-8-402, 61-8-409, 61-8-734, 61-11-203, 61-11-204, AND 61-13-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-2-302, MCA, is amended to read:

"61-2-302. Establishment of driver rehabilitation and improvement program -- ~~department to contract with private entities -- participation by offending drivers.~~ (1) ~~(a)~~ The department ~~shall~~ may establish by administrative rules a driver rehabilitation and improvement program or programs, ~~that~~ The programs may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving

attitudes, habits, and techniques and must include the requirements for obtaining a restricted probationary driver's license.

~~_____ (b) The rules must:~~

~~_____ (i) provide for the local program courses to be operated by private entities;~~

~~_____ (ii) develop a procedure for certifying private entities as driver rehabilitation and improvement course providers;~~

~~_____ (iii) establish the criteria that private entities must meet in order to be certified by the department; and~~

~~_____ (iv) provide for an alternative driver rehabilitation and improvement procedure for drivers who live in areas where a course is not offered.~~

(2) ~~Official participation in the driver rehabilitation and improvement program is limited to those persons whose license to operate a motor vehicle in the state of Montana~~ Except when otherwise provided or restricted by statute, a person whose driver's license is suspended or revoked by the department may participate in any driver rehabilitation and improvement program established under this section if the person's license is:

(a) ~~(i) subject to suspension or revocation~~ suspended as a result of a violation of the traffic laws of this state, unless the suspension was imposed under the authority provided in Title 61, chapter 8, part 8; or;

(ii) unless otherwise provided by the sentencing court, is suspended under 45-5-624(2)(b); or

(b) ~~revoked and they have~~ the person has:

(i) ~~completed at least 3 months of a 1-year revocation or, if revocation is for a second or subsequent violation of 61-8-401 or 61-8-406, have provided the department with proof of compliance with the ignition interlock device restriction imposed under 61-5-208; or~~

(ii) ~~completed 1 year of a 3-year revocation; and~~

(iii) ~~met the requirements for reobtaining a Montana driver's license; or~~

~~_____ (c) subject to suspension as provided in 61-11-204(3).~~

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver rehabilitation and improvement program and meets the eligibility requirements of subsection (2).

(4) ~~In the event that~~ If a person's driver's license has been surrendered before the person's selection

for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation ~~order~~ action must be terminated and the ~~order of suspension or revocation enforced~~ action must be reinstated if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

~~(7) The department and the entity with which the department contracts under subsection (1)(b) shall establish separate fee schedules that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be collected separately by the department and by the entity with which the department contracts under subsection (1)(b):~~

~~(8) The fees collected by the department under subsection (7) must be used to help defray costs incurred by the department in administering the program and in contracting with private entities as provided in subsection (1). The department may not use the fees collected under subsection (7) for any other purpose:~~

(7) The department may establish a schedule of fees that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be used to help defray costs of maintaining the program.

~~(9)(8)~~ A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, judge of a district court of the state, or hearing examiner of the department.

~~(10)(9)~~ (a) Except as provided in ~~(10)(b)~~ subsection (9)(b), the department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(b) The department may not issue a restricted probationary license that would permit an individual to drive a commercial motor vehicle during a period in which:

(i) the individual is disqualified from operating a commercial motor vehicle under state or federal law;

or

(ii) the individual's driver's license or driving privilege is revoked, suspended, or canceled.

~~(11)(10)~~ It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the

restrictions imposed on a restricted license issued to the person under this section."

Section 2. Section 61-5-107, MCA, is amended to read:

"61-5-107. Application for license, instruction permit, or motorcycle endorsement. (1) Each application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must include the full legal name, date of birth, sex, residence address of the applicant [and the applicant's social security number], must include a brief description of the applicant, and must include a statement that allows the department to determine if:

(a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country;

(b) any commercial driver's license has ever been suspended or revoked;

(c) an application has ever been denied and, if so, the date of and reason for suspension, revocation, or denial;

(d) the applicant has a physical or mental disability, limitation, or condition that impairs or may impair the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(e) the applicant relies upon, or intends to rely upon, any adaptive equipment or operational restrictions to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, including the nature of the equipment or restrictions.

[(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) (a) When an application is received from an applicant who is not ineligible for licensure under

61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from the previous licensing jurisdiction. The driving record may be transmitted manually or by electronic medium. ~~When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.~~

(b) When received, the driving records must be appended to the driver's record created and maintained in this state. The department may rely on information contained in driving records received under this section to determine the appropriate action to be taken against the applicant upon subsequent receipt of a report of a conviction or other conduct requiring suspension or revocation of a driver's license under state law. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

Section 3. Section 61-5-205, MCA, is amended to read:

"61-5-205. Mandatory revocation or suspension of license upon proper authority certain convictions -- duration of action -- exceptions. (1) ~~The department upon proper authority shall revoke the an individual's driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for any of the following offenses, when the conviction or forfeiture has become final or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:~~

(a) negligent homicide resulting from the operation of a motor vehicle;

~~(b) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more;~~

~~(c)~~(b) any felony in the commission of which a motor vehicle is used;

~~(d)~~(c) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

~~(e)~~(d) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles; or

~~(f) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; or~~

~~(g)~~(e) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

~~(2) The department upon proper authority shall suspend the driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for~~ The department shall suspend an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

(a) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or operating a motor vehicle with a blood alcohol concentration of 0.10 or more;

(b) three reckless driving offenses committed within a period of 12 months; or

(c) a theft offense under 45-6-301 ~~when the conviction or forfeiture has become final~~ if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense. ~~The suspension must be for 30 days for a first offense, 6 months for a second offense, and 1 year for a third or subsequent offense.~~

(3) A revocation under subsection (1) must be for a period of 1 year.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection (2) must be for a period of 1 year.

(b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208(2)(b).

(c) A suspension under subsection (2)(c) must be for one of the following periods:

(i) 30 days for a first offense;

(ii) 6 months for a second offense; and

(iii) 1 year for a third or subsequent offense."

Section 4. Section 61-5-206, MCA, is amended to read:

"61-5-206. Authority of department to suspend license or driving privilege or issue probationary license. (1) The department may suspend the driver's license or driving privilege of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

~~_____ (a) has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;~~

~~_____ (b) has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;~~

~~_____ (c) is a habitually reckless or negligent driver of a motor vehicle;~~

~~_____ (d) is incompetent to drive a motor vehicle;~~

(e)(a) has committed or permitted an unlawful or fraudulent use of the license as specified in 61-5-302;

~~(f) has committed an offense in another state that if committed in this state would be grounds for suspension or revocation;~~

(g)(b) has falsified the licensee's date of birth on the application for a driver's license;

(h)(c) is under 21 years of age and has altered the licensee's or another's driver's license or identification card to obtain alcohol; or

(i)(d) has authorized another to use the licensee's driver's license or identification card to obtain alcohol;

or

~~_____ (j) has been declared a driver in need of rehabilitation and improvement, as defined in 61-11-203, and has failed to enroll in or successfully complete, within 90 days of notice, a driver rehabilitation and improvement course or other appropriate course determined by the department as provided in 61-11-204.~~

(2) However, the department may, in lieu of suspending the license or driving privilege, issue a probationary license to a driver, without preliminary hearing, upon a showing by its records or other sufficient evidence that the licensee's driving record would authorize suspension as provided in subsection (1). Upon issuance of a probationary license, the licensee is subject to the restrictions set forth in the probationary license. The licensee's driving privilege may be suspended upon conviction or forfeiture of bail not vacated of any traffic violation during the period of probation. The licensee shall surrender to the department all driver's licenses that have been issued to the licensee before the probationary license may be issued. The licensee's refusal or neglect to surrender the licenses upon demand is grounds for suspending all licenses. Probationary licenses may be issued for a period not to exceed 12 months.

(3) Upon suspending the license of any person or upon placing the person on probation, as authorized in this section, the department shall immediately notify the licensee in writing and upon the licensee's request shall afford the licensee an opportunity for a hearing as early as practical, within 20 days after receipt of the request, in the county in which the licensee resides unless the department and the licensee agree that the hearing may be held in some other county. At the hearing, the department through its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. At the hearing, the department shall either rescind

its order of suspension or probation or, for good cause, may affirm, reduce, or extend the period of probation or suspension of the license."

Section 5. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation -- probationary license -- ignition interlock device required on second or subsequent offense. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways ~~for a period of more than 1 year~~, except as otherwise permitted by law.

(2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) When a person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall ~~revoke~~ suspend the license or driving privilege of the person for a period of 1 year and, upon issuance of any restricted probationary license during the period of ~~revocation~~ suspension, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device. If the 1-year period passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license ~~revocation~~ suspension remains in effect until the course, treatment, or both, are completed.

(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

(3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's

driver's license. The stay must remain in effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension has been reinstated because of violation of an ignition interlock restriction.

~~(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).~~

~~(5)(4)~~ (a) Except as provided in subsection (4)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

~~(6)(5)~~ If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

Section 6. Section 61-5-212, MCA, is amended to read:

"61-5-212. Driving while license suspended or revoked -- penalty -- seizure of vehicle or rendering vehicle inoperable. (1) A person who drives a motor vehicle or commercial motor vehicle on any public highway of this state at a time when the person's privilege to do so is suspended or revoked in this state or any other state is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than \$500.

(2) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the person's driver's license was suspended or revoked shall extend the period of suspension or revocation for an additional ~~like~~ 1-year period.

(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended ~~or revoked~~ for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409,

or 61-8-410 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.

(6) A court may not suspend or defer imposition of penalties provided by this section."

Section 7. Section 61-7-103, MCA, is amended to read:

"61-7-103. Accidents involving death or personal injuries. (1) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop ~~such the~~ vehicle at the scene of ~~such the~~ accident or as close ~~thereto to the accident~~ as possible; but shall then ~~forthwith~~ return to and in every event ~~shall~~ remain at the scene of the accident until ~~he~~ the driver has fulfilled the requirements of 61-7-105. ~~Every such stop shall~~ Each stop at the scene of the accident must be made without obstructing traffic more than is necessary.

(2) ~~Any person~~ A driver failing to stop or to comply with ~~said the~~ requirements ~~under such circumstances~~ of subsection (1) shall upon conviction be punished by imprisonment for not less than 30 days or more than 1 year, ~~or~~ by a fine of not less than \$100 or more than \$5,000, ~~or~~ by both ~~such~~ fine and imprisonment.

(3) The department shall revoke the license or permit to drive of any resident and any nonresident operating privilege of ~~any a person so~~ convicted of violating this section for the period prescribed in ~~61-5-208~~ 61-5-205."

Section 8. Section 61-8-402, MCA, is amended to read:

"61-8-402. Blood or breath tests for alcohol, drugs, or both. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount

or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage, bodily injury, or death.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (6).

(5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension ~~or revocation~~ and the right to a hearing provided in 61-8-403.

(6) The following suspension ~~and revocation~~ periods are applicable upon refusal to submit to one or more tests:

(a) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a ~~revocation~~ suspension of 1 year with no provision for a restricted probationary license.

(7) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(8) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

(9) A suspension under this section is subject to review as provided in this part.

(10) This section does not apply to blood and breath tests, samples, and analyses used for purposes of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an offense not in this part."

Section 9. Section 61-8-409, MCA, is amended to read:

"61-8-409. Preliminary alcohol screening test. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410.

(2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

(3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the preliminary alcohol screening test will result in the suspension ~~or revocation~~ for up to 1 year of that person's driver's license.

(4) If the person refuses to submit to a test under this section, a test will not be given. However, the refusal is sufficient cause to suspend ~~or revoke~~ the person's driver's license as provided in 61-8-402.

(5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited

to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

(6) The provisions of 61-8-402 (3) through (8) that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension or revocation under 61-8-402.

(7) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(5)."

Section 10. Section 61-8-734, MCA, is amended to read:

"61-8-734. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- conviction defined -- place of imprisonment -- home arrest -- exceptions -- deferral of sentence not allowed. (1) (a) For the purpose of determining the number of convictions under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, "conviction" means a final conviction, as defined in 45-2-101, in this state; conviction for a violation of a similar statute or regulation in another state, or a federally recognized Indian reservation; or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state, another state, or a federally recognized Indian reservation, which forfeiture has not been vacated.

(b) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes.

(c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be counted for purposes of determining the number of a subsequent conviction for violation of either 61-8-401 or 61-8-406.

(2) Except as provided in 61-8-731, the court may order that a term of imprisonment imposed under 61-8-714 or 61-8-722 be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may

impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(3) Subject to the limitations set forth in 61-8-714 and 61-8-722 concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under either section be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under 61-8-714, 61-8-722, or 61-8-731.

(5) The provisions of 61-2-107, 61-2-302, 61-5-205~~(1)(b)~~(2), and 61-5-208(2), relating to suspension and revocation of driver's licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406."

Section 11. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty or nolo contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle that is prohibited by law, ordinance, or administrative order.

~~(2) "Driver in need of rehabilitation and improvement" means a person who within a 2-year period accumulates 18 or more conviction points according to the schedule specified in subsection (3).~~

~~(3)(2)~~ "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;

(k) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(l) speeding, except as provided in 61-8-725(2), 3 points;

(m) all other moving violations, 2 points.

~~(4)~~(3) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.

~~(5)~~(4) "License" means any type of license or permit to operate a motor vehicle.

~~(6)~~(5) "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway, as the term is defined in 61-1-201.

~~(7)~~(6) A traffic regulation includes any provision governing motor vehicle operation, equipment, safety, size, weight, and load restrictions or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking."

Section 12. Section 61-11-204, MCA, is amended to read:

"61-11-204. Department's duties. (1) If the records maintained by the department show that a person's driving record brings the person within the definition of a habitual traffic offender, the department shall:

- (a) declare the person a habitual traffic offender;
- (b) revoke the person's driver's license or driving privileges as provided in 61-11-211; and
- (c) notify the person in writing of the declaration and revocation.

(2) The notice must be sent by first-class mail to the most current address on record with the department. The notice must include a certified reproduction of the person's driving record as contained in the computer storage device used by the department for recordkeeping. The notice must inform the person of the right under 61-11-210 to appeal the declaration and revocation. Service of the notice is complete upon mailing.

~~(3) If the records maintained by the department show that a person's driving record brings the person within the definition of a driver in need of rehabilitation and improvement, the department shall:~~

- ~~—— (a) declare the person a driver in need of rehabilitation and improvement;~~
- ~~—— (b) notify the person that unless the person enrolls in and successfully completes, within 90 days of notification, a certified driver rehabilitation and improvement course, as provided in 61-2-302, the person's driver's license will be suspended for a period not to exceed 6 months or until the person has successfully completed the course, whichever occurs first;~~
- ~~—— (c) provide the person with a list of certified driver rehabilitation and improvement courses and information about how the person may comply with the provisions of this subsection (3) if a driver rehabilitation and improvement program does not exist near the person's residence; and~~
- ~~—— (d) send the notice as provided in subsection (2).~~
- ~~—— (4) If the person fails to enroll in a certified driver rehabilitation and improvement program or fails to successfully complete the program or an appropriate substitute within 90 days, the department may suspend the person's driver's license as provided in 61-5-206 for a period not to exceed 6 months or until the person has successfully completed the course, whichever occurs first."~~

Section 13. Section 61-13-104, MCA, is amended to read:

"61-13-104. Penalty -- no record permitted. (1) A driver who violates 61-13-103 shall be fined \$20, but the violation is not a misdemeanor pursuant to 45-2-101, 46-18-236, 61-8-104, or 61-8-711. A violation of 61-13-103 may not be counted as a moving violation for purposes of suspending a driver's license under 61-11-203~~(3)(m)~~(2)(m). Bond for this offense is \$20, and a jail sentence may not be imposed.

(2) A violation of 61-13-103 may not be recorded or charged against the driver's record of a person

violating 61-13-103.

(3) An insurance company may not hold a violation of 61-13-103 against the insured or increase the insured's premiums due to a violation of 61-13-103."

Section 14. Discount on license reinstatement fee -- completion of driver rehabilitation program.

(1) A person who submits a certificate of completion from a department-approved driver rehabilitation program must receive a 50% reduction on the license reinstatement fee due under 61-2-107 or [section 1 of House Bill No. 215].

(2) For purposes of this section, a driver rehabilitation program may be approved by the department if the program provider annually certifies to the department that the provider's program:

(a) provides a participant with a minimum of 4 hours of instruction on Montana driving laws, the importance of positive driving attitudes and habits, defensive driving techniques, and the responsible use of drugs and alcohol;

(b) includes preinstruction and postinstruction testing of each participant;

(c) provides a certificate of completion to each person who successfully completes the program; and

(d) reports to the department, in a timely manner, the name, date of birth, and driver's license number of each person to whom the provider has issued a certificate of completion.

Section 15. Coordination instruction. (1) If a senate or house bill is passed and approved that amends 61-8-406(1)(a) by substituting "0.08" for "0.10", then "0.08" is substituted for "0.10" in 61-5-205(2)(a) as amended by [this act].

(2) If House Bill No. 215 is not passed and approved, then the bracketed language in [section 14(1) of this act] is void.

(3) If House Bill No. 185 and [this act] are both passed and approved, then subsection (4)(a) of 61-5-107 as amended by [this act] must read as follows:

"(4) (a) When an application is received from an applicant who is not ineligible for licensure under 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from the previous licensing jurisdiction each jurisdiction in which the applicant was licensed in the preceding 10-year period. The driving record may be transmitted manually or by electronic

medium. When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance."

(4) If Senate Bill No. 13 and [this act] are both passed and approved, then [section 1 of Senate Bill No. 13], amending 61-5-205, is void.

(5) If Senate Bill No. 37 and [this act] are both passed and approved, then subsection (3) of 61-5-205 in [this act] must read as follows:

"(3) Except as provided in 61-5-208(3)(c), a revocation under subsection (1) of this section must be for a period of 1 year."

(6) If Senate Bill No. 37 and [this act] are both passed and approved, then 61-5-208 must read as follows:

"61-5-208. Period of suspension or revocation -- probationary license -- ignition interlock device required on second or subsequent offense. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) ~~(a)~~ Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

~~(b)(3) When~~ If the department receives a report from a court or another licensing jurisdiction that a person is has been convicted or forfeits has forfeited bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated;

(a) upon a first conviction, suspend the driver's license or driving privilege of the person for a period of 6 months. ~~Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year and, upon~~ Upon issuance of any restricted probationary license during the period of ~~revocation~~ suspension, the department shall restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device;

(i) if the report shows that the person's alcohol concentration at the time of arrest was 0.16 or greater;

or

(ii) if ordered by the court when the person's alcohol concentration at the time of arrest was less than

0.16.

(b) upon a second or third conviction for an offense within 5 years of the first offense, suspend the license or driving privilege of the person for a period of 1 year and, upon reinstatement of the person's driving privileges, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the 12-month period beginning with the end of the period of the driver's license suspension. A restricted probationary license may not be issued during the 1-year period of suspension.

(c) upon a fourth or subsequent conviction constituting a felony under 61-8-731, revoke the license or driving privilege of the person for a period of 5 years. A restricted probationary license may not be issued during the first 2 years of the revocation period. If the person's probation officer agrees, the person's driving privileges may be reinstated for the last 3 years of the revocation period, and the person must be restricted to driving only a motor vehicle equipped with a functioning ignition interlock device during the remainder of the revocation period.

(4) If the 1-year period of revocation under subsection (3)(b) or (3)(c) passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both, are completed.

(e)(5) For the purposes of subsection (2)(b) (3), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

(3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.

(b)(6) # When an ignition interlock restriction is imposed under subsection (3) and the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to such acts as operating a motor vehicle

not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall ~~lift the stay and reinstate the license suspension~~ suspend the person's license or driving privilege for the remainder of the ~~time~~ restriction period. The department may not issue a restricted probationary ~~driver's~~ license to a person whose license ~~suspension~~ has been ~~reinstated~~ suspended because of violation of an ignition interlock restriction.

~~(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).~~

~~(5)(7)~~ (a) The ~~Except as provided in subsection (7)(b), the period of~~ suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

~~(6)(8)~~ If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

(7) If House Bill No. 195 and [this act] are both passed and approved, then [section 1 of House Bill No. 195], amending 61-2-302, is void.

(8) If House Bill No. 195 and [this act] are both passed and approved and Senate Bill No. 37 is not passed and approved, then 61-5-208 must read as follows:

"61-5-208. Period of suspension or revocation -- probationary license -- ignition interlock device required allowed on ~~second or subsequent~~ first offense. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways ~~for a period of more than 1 year,~~ except as ~~otherwise~~ permitted by law.

(2) (a) Except as provided in 61-2-302, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) When a person is convicted or forfeits bail or collateral not vacated for ~~the~~ a first offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for ~~the~~ a first offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or

collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall ~~revoke~~ suspend the license or driving privilege of the person for a period of 1 year and, ~~upon issuance of any restricted~~ may not issue a probationary license during the period of ~~revocation, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device~~ suspension. If the 1-year suspension period passes and the person has not completed a chemical dependency education course, treatment, or both, as ordered by the sentencing court, the license ~~revocation~~ suspension remains in effect until the course, treatment, or both, are completed.

(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

(3) (a) If ~~a~~ the person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a first violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension has been reinstated because of violation of an ignition interlock restriction.

~~(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).~~

~~(5)(4)~~ (a) ~~The~~ Except as provided in subsection (4)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

~~(6)~~(5) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802."

Section 16. Effective date. [This act] is effective on passage and approval.

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